

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BEFORE THE HONORABLE LARRY R. HICKS, DISTRICT JUDGE

ORACLE USA, INC., a Colorado :
corporation; ORACLE AMERICA, :
INC., a Delaware corporation; :
and ORACLE INTERNATIONAL : No. 2:10-cv-0106-LRH-PAL
CORPORATION, a California :
corporation, :
:
Plaintiffs, :
:
vs. :
:
RIMINI STREET, INC., a Nevada :
corporation; and SETH RAVIN, :
an individual, :
:
Defendants. :
:

TRANSCRIPT OF JURY TRIAL - DAY 9
(Pages 1639 through 1904)

September 24, 2015

Las Vegas, Nevada

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1 LAS VEGAS, NEVADA, SEPTEMBER 24, 2015, 7:56 A.M.

2 --oOo--

3 P R O C E E D I N G S

4
5 COURTROOM ADMINISTRATOR: Please rise.

6 (Outside the presence of the jury.)

7 THE COURT: Good morning. Have a seat, please.

8 The record will show that we are convened in
9 open court. The parties and counsel are present. The jury
10 is not present.

11 I have had an opportunity to review and consider
12 various matters that have been pending and addressed.

13 Dealing with the most recent, the video
14 testimony of -- video deposition testimony of Mr. Grigsby,
15 I have reviewed the transcript, and I am of the opinion
16 that the objection to the violation of the JD Edwards
17 employment agreement by Grigsby is not something that
18 should be admitted in this case.

19 I am of the opinion, however, that the
20 references related to Oracle and copyright issues should be
21 admissible because they directly concern the parties in
22 this action.

23 So that being the case, I'm looking at the
24 written transcript that was provided to me. I believe that
25 the videotape should be -- should not include -- should be

1 redacted however that is done mechanically.

2 The question and answers from -- I'm looking at
3 the lower right page number, page 10, referring to page 299
4 of his deposition, the lines starting with line 24,
5 through, on the next page, page 11, which would take it
6 through line number 5 from page 301.

7 So that the video would then pick up with line
8 6, "MR. HOWARD: Let's mark as Exhibit 215," and that would
9 be admissible through the end.

10 I do not believe there's further reference to
11 the violation of the employment contract, questions that
12 were directed concerning JD Edwards and Mr. Grigsby. I
13 don't think there's a further reference. If there is, I'd
14 hear from counsel.

15 But in any event, the redacted portion,
16 referring to the deposition transcript, would be from page
17 299 at line 24 through page 301 at line 5.

18 With regard to the question concerning the
19 experts having not considered TomorrowNow and CedarCrestone
20 as noninfringing alternatives, I'm of the view that the
21 experts should be able to testify to that.

22 There is evidence before the Court, not before
23 the jury, with regard to CedarCrestone but certainly with
24 regard to TomorrowNow, that would permit inferences that
25 there would be reason that TomorrowNow should not be

1 considered as a noninfringing entity.

2 I'm not quite sure how to deal with
3 CedarCrestone because I just don't think there's evidence
4 in front of the jury concerning that. But I'm also
5 recalling that CedarCrestone was a very insignificant
6 competitor regarding service.

7 So I believe the experts are entitled to
8 consider who they did not consider because they did not
9 feel they qualified as noninfringing alternatives.

10 The extent to which Rimini cares to
11 cross-examine that, of course, is completely up to counsel
12 for Rimini.

13 With regard to the redactions that have been at
14 issue concerning Defendants' Exhibits 152, 153, 154B 164A,
15 340, and 345, which are addressed in the recently filed
16 motion number 807 and related response by Oracle at 812, I
17 think the Court is just going to have to, at some point
18 when we have a break, go through the individual redactions.

19 I think there should be some redactions.
20 Generally speaking, I'm of the view that anything that's
21 clearly hearsay attributable to a customer's leaving,
22 hearsay comments by the customer's representative or what
23 would appear to be clearly founded upon hearsay comments,
24 is objectionable and should be redacted.

25 But I'm also of the opinion that the present

1 sense impressions of the Oracle employees as they may be
2 reflected within the challenged portions should be
3 admissible.

4 So, again, we're going to -- perhaps as a
5 guideline, counsel can agree on some of that, and as to the
6 rest, we'll just have to forge through it at an opportune
7 time.

8 And I don't know how our timing works on any of
9 that, but I just wanted to give counsel a heads up so that
10 you have a sense of where the Court is with regard to those
11 issues.

12 So I believe I've covered the issues that were
13 in front of me. Are there any other issues that counsel
14 have in mind that you would like the Court to address?

15 MR. WEBB: Good morning, Your Honor.

16 Up until a couple days ago, Oracle had Juan
17 Jones listed as a will call witness. They've informed us
18 that they were no longer intending to call him.

19 I advised counsel this morning that we would
20 like to call him in our case. They are considering that
21 request, and hopefully we'll have an answer some time very
22 soon. I just wanted to alert the Court that this might be
23 an issue.

24 THE COURT: All right.

25 MR. WEBB: Thank you.

1 THE COURT: Will someone tell me who Juan Jones
2 is?

3 MR. WEBB: He's a senior vice-president at
4 Oracle, I believe, dealing with customer support.

5 THE COURT: All right.

6 MR. WEBB: Thank you, Judge.

7 THE COURT: All right. Thank you.

8 Okay. Do we have our jury here, Dionna?

9 COURTROOM ADMINISTRATOR: I believe we do.

10 THE COURT: Let's bring them in.

11 COURTROOM ADMINISTRATOR: Yes, Your Honor.

12 (Jurors enter courtroom at 8:06 a.m.)

13 THE COURT: Good morning. Have a seat, please.

14 All right. Day 11 begins.

15 The record will show the jury is present,
16 counsel and the parties are present. We are in open court.

17 And I believe we were at plaintiffs' next
18 witness; is that correct?

19 Mr. Polito?

20 MR. POLITO: Your Honor, good morning.

21 Ladies and gentlemen, we're going to play
22 another deposition video to start this morning. We'll be
23 playing the video of Ray Grigsby.

24 Mr. Grigsby at the time of the video was
25 vice-president of JD Edwards practice at Rimini Street.

1 He was testifying in this video as a corporate
2 representative of Rimini Street on topics including JD
3 Edwards environment and JD Edwards support.

4 You've heard Mr. Grigsby's name in, for
5 instance, Mr. Maddock's testimony yesterday.

6 This runs about 25 minutes. Thank you.

7 COURTROOM ADMINISTRATOR: What about the
8 exhibits?

9 MR. POLITO: Oh, sorry, the exhibits. Thank
10 you.

11 So the previously admitted exhibits are PTX 181,
12 195, 199, 200, and 201.

13 And the exhibits to which there are no objection
14 and which we would move to admit are PTX 182, 186, 190, and
15 194.

16 MR. RECKERS: No objection, Your Honor.

17 THE COURT: All right. They are admitted.

18 (Plaintiffs' Exhibits 182, 186, 190, 194
19 received into evidence.)

20 THE COURT: And you may go ahead, Mr. Polito.

21 (Videotape deposition of Ray Grigsby played
22 as follows:)

23 PAGE 5:01 TO 5:03 (RUNNING 00:00:04.906)

24 "Would you please state your full name for
25 the record.

1 A. Sure. Ray C. Grigsby, Jr.

2 PAGE 16:11 TO 16:21 (RUNNING 00:00:33.287)

3 Q. Now, you said all of these nine local
4 copies of JD Edwards software that are on
5 Rimini systems were created before you joined
6 the company; is that correct?

7 A. That is correct, yes. Approximate timing
8 was in mid-2008.

9 Q. That's the timing of when these copies
10 were created?

11 A. Yes. The JDE practice actually started in
12 about 2008. One of the first clients was
13 Medtronic.

14 PAGE 25:06 TO 25:11 (RUNNING 00:00:13.251)

15 Q. And the nine JD Edwards environments that
16 you've described, those are not behind a
17 lockdown procedure?

18 A. Well, okay. They're not the same as an
19 archive, but they are locked-down VMs.

20 PAGE 25:12 TO 25:15 (RUNNING 00:00:09.414)

21 Q. What do you mean by that?

22 A. Again, we cannot access those without
23 going through Mr. Lester and opening an IT
24 help ticket to get to that VM.

25 PAGE 30:23 TO 31:16 (RUNNING 00:00:38.385)

1 Q. Do you have contractual authorization from
2 each of the clients for whom you -- Rimini
3 has an in-house local JDE environment?

4 A. Would you repeat the question,
5 please?

6 Q. Yeah. Do you have a document from the
7 client which says that it's okay for you to
8 have our software installed locally on your
9 machines at Rimini Street?

10 A. Okay. So you're speaking of the nine
11 instances we talked about earlier.

12 Q. Yes.

13 A. From my understanding with Dennis Chiu,
14 and I -- I have not seen those contracts, but
15 it was written in the contract that we had
16 authorization from the client to load those
17 onto Rimini Street's local machines.

18 PAGE 32:16 TO 32:20 (RUNNING 00:00:10.707)

19 Q. Sure. Is there anything in the Oracle
20 license agreement with those customers that
21 would allow Rimini to have the JDE software
22 installed locally on its local machines?

23 PAGE 33:02 TO 33:04 (RUNNING 00:00:05.344)

24 A. To the best of my knowledge and from my
25 research, I cannot answer yes or no to that

1 question.

2 PAGE 33:06 TO 33:10 (RUNNING 00:00:08.381)

3 Q. Now, you were employed at JD Edwards at
4 one point, is that correct, Mr. Grigsby?

5 A. I worked for JD Edwards for over 18 years.

6 PAGE 36:12 TO 37:18 (RUNNING 00:01:03.025)

7 Q. When did you start at Rimini Street?

8 A. I was hired late September 2009.

9 Q. What was your job title at that time?

10 A. Vice president of the JD Edwards practice.

11 Q. Has that changed since September 2009?

12 A. No, sir.

13 Q. Who did you report to in September 2009?

14 A. I report to Brian Slepko, who's senior VP
15 of global operations.

16 Q. And you've reported to him since you
17 started your employment?

18 A. Yes, sir.

19 Q. Has your job description changed at all
20 since you started?

21 A. No.

22 Q. And what is your job description?

23 A. My job description is to manage the JDE
24 practice, working with sales and marketing to
25 grow the JD Edwards practice globally. I'm

1 also in charge of trying to recruit and grow
2 it internally in terms of services we
3 provide, ensuring that we have proper
4 methodologies and procedures in place,
5 and basically running the P&L to achieve
6 margins.

7 PAGE 87:13 TO 87:20 (RUNNING 00:00:25.486)

8 Q. The first question is, looking at the
9 first page of Exhibit 180, can you explain
10 why, if the Medtronic environments were
11 created in 2008 and not used, this document
12 is being created on what appears to be June
13 15, 2009?

14 A. Based on my investigation and research,
15 no, I can't explain that.

16 PAGE 119:21 TO 120:04 (RUNNING 00:00:17.298)

17 MR. HOWARD: Let's mark as Exhibit 185 an
18 email chain at the top from JR Corpuz to
19 Dennis Chiu with a copy to Michael Kerr and
20 Bobby Parmalee dated June 8, 2009.

21 - - -

22 (Whereupon, Grigsby-Exhibit 185,
23 email chain, Bates RSI00347464 to -481,
24 was marked for identification.)

25 PAGE 120:07 TO 120:12 (RUNNING 00:00:14.879)

1 Q. Let me direct you to the second page of
2 Exhibit 185, which is an email between
3 Michael Kerr to Dennis Chiu, with a copy to
4 Lourdes Medina, dated June 8, 2009.

5 Do you see that?

6 A. Yes.

7 PAGE 120:16 TO 120:24 (RUNNING 00:00:19.137)

8 Q. He says: Dennis, I am planning a JDE
9 install for Medtronic support system contract
10 compliance. I will need some ISO CD images
11 of their software.

12 He says: To start the process, can you get
13 me a list of all the CDs we have in archive
14 for them?

15 Do you see that?

16 A. Yes, sir.

17 PAGE 121:23 TO 122:02 (RUNNING 00:00:09.182)

18 Q. Does it now appear to you that an
19 additional Medtronic environment was created
20 in June of 2009?

21 A. Based on the information you provided me,
22 yes.

23 PAGE 161:22 TO 162:03 (RUNNING 00:00:25.859)

24 MR. HOWARD: Let me mark as Exhibit 190 a
25 spreadsheet which is an excerpt of ticketing

1 requests from the document produced as RSI
2 00494805, which has been modified so that the
3 ID column appears at the left of every page.

4 PAGE 162:05 TO 162:20 (RUNNING 00:00:21.984)
5 (Whereupon, Grigsby-Exhibit 190,
6 Spreadsheet, Bates RSI00494805
7 (excerpted) - (nine pages), was marked
8 for identification.)

9 - - -

10 BY MR. HOWARD:

11 Q. Mr. Grigsby, do you recognize what's been
12 marked as Exhibit 190, or at least the
13 information that's contained within it?

14 A. I recognize the information in here. I
15 don't work with this document.

16 Q. So let me ask you. You recognize this to
17 be an excerpt of various ticketed requests
18 that are put into IT?

19 A. Yes.

20 PAGE 164:15 TO 164:20 (RUNNING 00:00:29.613)

21 Q. But do you agree that according to the
22 naming convention that we saw earlier, that
23 the first name listed here, JCOPE5TDE1, is a
24 JD Edwards EnterpriseOne 8.10 deployment
25 server on machine 1? It's Exhibit 181, if

1 you're looking for the naming convention.

2 PAGE 164:21 TO 165:23 (RUNNING 00:01:59.032)

3 A. Based on Exhibit 181, I'd have to agree,
4 yes, sir.

5 Q. And the second one there, JCOPE5TEN1 is a
6 JD Edwards EnterpriseOne 8.10 enterprise
7 server on machine 1?

8 A. What ID are you referencing?

9 Q. Still on 2700, just going down the list
10 there of the Detailed Description column, the
11 second name, JCOPE5TEN1 is a JD Edwards
12 EnterpriseOne 8.10 enterprise server?

13 A. Based on Exhibit 181, yes.

14 Q. And the next one below that, JCOPE5TWE1 is
15 a JD Edwards EnterpriseOne 8.10 web server?

16 A. Again, based on 181, yes.

17 Q. And the last two are JD Edwards
18 EnterpriseOne 8.10 clients, one on machine 1,
19 one on machine 2?

20 A. Yes.

21 Q. And this indicates that those were all
22 created on August 5th, 2009, at 8:37 a.m., is
23 that right, in the far right-hand column?

24 A. From the -- yes, sir.

25 Q. And modified on August 18th, 2009 at 5:33

1 p.m.?

2 A. That's what's stated, yes.

3 PAGE 168:03 TO 168:12 (RUNNING 00:00:30.274)

4 Q. Well, they were being created, new
5 environments were being created.

6 A. Right. And to your point, without further
7 discussions with George Lester, I don't know
8 why there would be a WE or a CL in -- unless
9 this was something -- because it -- clearly,
10 on Exhibit 182, he did not list it. So my
11 question to Mr. Lester would be why on
12 Exhibit 190, which is an IT help ticket, does
13 it appear.

14 PAGE 170:22 TO 172:03 (RUNNING 00:02:07.825)

15 Q. Now, take a look, please, on that same
16 page, at ID No. 4616, creation date of
17 February 24th, 2010. Do you see that?

18 A. Yes, sir.

19 Q. Could you read the description into the
20 record, please.

21 A. Please make a virtual machine from
22 JDESATemplate and call it JCOPE5TSA1.

23 Thanks, Tim. My mistake. It is
24 JDE810SATemplate.

25 Q. And the -- so you understand that the

1 environment that's created on January 15th
2 called JDE810SATemplate is being used to
3 create the environment called JCOPE5TSA1 on
4 February 24th, 2010?

5 A. That's correct. Yes, sir.

6 Q. Do you know whose software is used to
7 create JDE810SATemplate?

8 A. I do not.

9 Q. But it is then copied to create an
10 environment that has the client designation
11 of City of Overland Park; is that correct?

12 A. From reading line 4616, yes.

13 Q. In each case, the JDE810SATemplate and the
14 JCOPE5TSA1 copy of that environment, in each
15 case, those are installed copies of JD
16 Edwards software, is that correct, according
17 to the naming conventions?

18 A. According to the naming conventions, yes.

19 PAGE 237:25 TO 238:09 (RUNNING 00:00:15.059)

20 MR. HOWARD: Okay. Let's mark as Exhibit 200
21 an email from Ray Grigsby to Jim Egger at the
22 top dated October 29, 2009, attaching the
23 2009 JDE World 1099 TDD.

24 - - -

25 (Whereupon, Grigsby-Exhibit 200,

1 email chain, with attachments, Bates
2 RSI03097166 to -183, was marked for
3 identification.)

4 PAGE 238:12 TO 238:22 (RUNNING 00:00:30.067)

5 Q. All right. Mr. Grigsby, is Exhibit 200 an
6 email exchange between you and Mr. Egger
7 relating to the 2009 1099s?

8 A. Yes, sir, it is.

9 Q. And on page 2 of Exhibit 200, that's an
10 email from Mr. Egger to you?

11 A. Yes, sir, it is.

12 Q. And he's attaching the technical design
13 document for the 2009 JDE World and OneWorld
14 1099?

15 A. Yes, sir, it is.

16 PAGE 239:04 TO 241:04 (RUNNING 00:02:03.998)

17 Q. He says: It is written at a high level as
18 not to ruffle any feathers with big O or
19 anyone else.

20 Do you understand him to be referring to
21 Oracle there?

22 A. Yes, sir, I do.

23 Q. And why would it be necessary to write it
24 at a high level so as not to ruffle Oracle's
25 feathers?

1 A. I have no comment on that. It wouldn't
2 ruffle Oracle's feathers.

3 Q. How do you know?

4 A. Well, as long as -- again, if I look at
5 the attachments to this, this is a basic
6 requirements document that is, again,
7 generic. And he took this BRD to let me
8 review it, to see what changes are required
9 for 2009 1099s. And then he would take this,
10 a new one specific to each client.
11 So I think what he's trying to say, and not
12 politically in a good way, was that we don't
13 take code and just copy it, without naming it
14 for the client and having it specific for
15 each client.

16 Q. No. He just uses the code in one
17 environment, writes a detailed design
18 document to be used with other clients.

19 Right?

20 A. Well, again, we went over this early this
21 morning. For year end, the changes are the
22 same for all clients for World and E1. So
23 there's a basic Word doc, if you will, and
24 his instructions of what he should do is take
25 that basic template and copy it and create an

1 FDD and a TDD for each client as part of the
2 year-end process.

3 Q. He created this document from the Giant
4 Cement environment, right?

5 A. Yes, sir, he did. And he showed me -- I
6 asked for an example of one, to see what they
7 look like.

8 Q. And you told him to keep it at a high
9 level?

10 A. Well, this is not a high level. This is a
11 -- I believe it said TDD, did it not?

12 Q. Well, his email says it's written at a
13 high level, right?

14 A. It does say "high level," yes, sir.

15 PAGE 243:15 TO 243:21 (RUNNING 00:00:11.361)

16 Q. Yeah. And there's nothing in here
17 specific to Giant Cement, is there, sir?

18 A. No, sir, not in this attachment.

19 Q. And we know that two days before, he went
20 in and did this fix in Giant Cement, right?

21 PAGE 243:24 TO 244:19 (RUNNING 00:01:03.315)

22 A. Yes, sir.

23 BY MR. HOWARD:

24 Q. On Exhibit 199, he says he's going to go
25 in and do this fix on Giant Cement and unit

1 test it, right?

2 A. That's correct. Yes, sir.

3 Q. And then two days later, he sends you a
4 document entitled 2009 JDE World 1099 TDD.
5 Right?

6 A. Yes, sir. I'm trying to remember why he
7 did this. And I think it was at my request,
8 to show me his first copy of the design
9 documents for the 1099, because I do not see
10 the name "Giant Cement" on here at all.

11 Q. And isn't it a fact that this document
12 which Mr. Egger prepared using the Giant
13 Cement environment was then used to do the
14 1099 2009 for all the other JD Edwards
15 clients?

16 PAGE 244:25 TO 245:13 (RUNNING 00:00:29.365)

17 A. If this was Mr. Egger's first client, he
18 probably produced this for Giant, as you
19 said. And since, as I said, the changes for
20 1099s and W-2s are similar for all clients,
21 he probably took this format and then copied
22 it, the form, for other clients, and he
23 should have labeled that when he put it into
24 DevTrack.

25 BY MR. HOWARD:

1 Q. But he didn't label it. It's just one
2 document that's the 2009 1099 TDD, and it's
3 used for all clients; isn't that true?

4 A. Per this email, yes, sir.

5 PAGE 291:14 TO 291:22 (RUNNING 00:00:09.772)

6 Q. Mr. Grigsby, I'm going to mark as Exhibit
7 213 an email from you to Brian Slepko dated
8 October 10, 2009 attaching a sales
9 presentation.

10 - - -

11 (Whereupon, Grigsby-Exhibit 213,
12 email, with attachments, Bates
13 RSI03112035 to -290, was marked for
14 identification.)

15 PAGE 291:24 TO 294:23 (RUNNING 00:03:10.185)

16 Q. Mr. Grigsby, do you recognize what's been
17 marked as Exhibit 213?

18 A. Yes, I do.

19 Q. What is it?

20 A. It's a presentation that I gave to Brian
21 when I first came on board to help him
22 understand the JDE software just as he was
23 understanding it. And this was a sales
24 presentation that they intended for me to
25 give as an introduction on what is JDE

1 software.

2 Q. And is this a presentation that you
3 prepared?

4 A. Yes, sir.

5 Q. Did you have any help preparing it?

6 A. If I remember back to 2009, I'm sure I did
7 have help from my team.

8 Q. Did you prepare it while you were at
9 Rimini Street?

10 A. Yes, sir.

11 Q. How long after you began at the company
12 did you send this email to Mr. Slepko
13 attaching this presentation?

14 A. I had joined the company in September.
15 This was set in October.

16 Q. How long did it take you to prepare this
17 presentation?

18 A. I couldn't say, sir. I mean, there's a
19 lot of presentations I prepared for Mr.
20 Slepko and the sales team, but...

21 Q. This is almost a hundred pages, right?

22 A. Yes.

23 Q. Did you agree, it has detailed technical
24 information in it?

25 A. Does it have detailed, technical

1 information in it?

2 Q. Yes.

3 A. It has flow of all the modules.

4 Q. Did you use any sources in preparing this?

5 A. Could you clarify "sources"? What do you
6 mean?

7 Q. Any sources.

8 A. Yes, I used a lot of sources of things I
9 got from some of -- some of it was blogs,
10 some of it was Qwest presentations that I had
11 from years past, some of it was material that
12 I had from other public presentations.

13 Q. Did you write all of the content in these
14 slides?

15 A. Did I write all the content?

16 Q. Yes.

17 A. I didn't create every slide, no, sir.

18 Q. Where did you get them if you didn't
19 create them?

20 A. Like I said, there was many sources. Some
21 are -- Andy Klee has a blog and a website.
22 I've been to many, many Qwest classes,
23 collaborate classes. I actually purchased
24 Oracle Open World documents in my -- years
25 past. So it was all material that I either

1 purchased or got publicly off the web.

2 Q. How did you purchase Oracle Open World
3 documents?

4 A. Years ago, when I was a business partner,
5 I was allowed to attend Oracle. And if you
6 paid for Oracle documents, you'd get
7 presentations.

8 Q. Were you allowed to use those documents to
9 compete against Oracle with third-party
10 providers?

11 PAGE 295:01 TO 295:17 (RUNNING 00:00:47.584)

12 A. No.

13 BY MR. HOWARD:

14 Q. But you nevertheless used those documents,
15 in part, to prepare this presentation,
16 Exhibit 213?

17 A. I used public -- documents that were
18 public that I had in my domain, yes, sir.

19 Q. And, in fact, isn't it true that you
20 simply copied an Oracle document to create
21 this presentation?

22 A. This was not an Oracle document. I've
23 never had a sign-on --

24 MR. HOWARD: Let's mark as Exhibit 214 a
25 presentation titled JD Edwards EnterpriseOne

1 Process Models.

2 PAGE 295:19 TO 298:12 (RUNNING 00:02:19.371)

3 (Whereupon, Grigsby-Exhibit 214,

4 JD Edwards EnterpriseOne Process Models,

5 Bates RSI03118309 to -403, was marked

6 for identification.)

7 - - -

8 BY MR. HOWARD:

9 Q. Mr. Grigsby, do you recognize what's been
10 marked as Exhibit 214?

11 A. Yes, I do.

12 Q. What is it?

13 A. It looks like an Oracle presentation.

14 Q. From your files; is that correct?

15 A. From my files?

16 Q. Yes, sir.

17 A. You'd have to tell me if that came from my
18 past hard drive from another --

19 Q. It was produced from your files in this
20 case.

21 A. Okay. Yes, then it is.

22 Q. Okay. And you agree that's an Oracle
23 presentation?

24 A. Yes.

25 Q. Can you look at the first page of that

1 presentation and compare it to the second
2 page of your presentation --

3 A. Yes.

4 Q. -- that's Exhibit 213?

5 A. Right.

6 Q. Do you agree that appears to be a copy
7 across the middle there?

8 A. Yes.

9 Q. Can you turn to the second page of Exhibit
10 214, the Oracle document, and compare it to
11 the third page of your presentation at
12 Exhibit 213. It would appear that that's a
13 copy across the middle.

14 A. Yes.

15 Q. And that the words "financial management"
16 appear on both slides?

17 A. Yes.

18 Q. And if you turn to the third page of the
19 Oracle document, which is Exhibit 214, and
20 compare it to the fourth page of your
21 document, do you agree that that's an exact
22 copy?

23 A. Yes.

24 Q. And did you, in fact, take the Oracle
25 document, remove the Oracle bar, and insert

1 the Rimini Street logo in your presentation
2 that you gave to Mr. Slepko on October 20th,
3 2009?

4 A. Yes.

5 Q. Why did you do that?

6 A. Number one, I thought I had rights to that
7 presentation because I purchased it. And,
8 number two, it was a presentation for Mr.
9 Slepko.

10 Q. Who did you buy this presentation from?

11 A. I don't remember that, sir.

12 Q. What proof do you have that you purchased
13 this presentation?

14 A. I don't know if I have any receipts that
15 go back that far, that many years.

16 Q. Do you understand that this is an Oracle
17 copyrighted document?

18 PAGE 298:15 TO 298:21 (RUNNING 00:00:17.698)

19 A. Yes, I see that. Yes, sir.

20 BY MR. HOWARD:

21 Q. Do you understand that it's improper and
22 violates Oracle's copyrights to copy its
23 documents as part of a sales presentation for
24 a competitor to compete against it?

25 PAGE 298:24 TO 299:18 (RUNNING 00:00:35.375)

1 A. Yes.

2 BY MR. HOWARD:

3 Q. And you knew that at the time that you did
4 this; is that true?

5 A. No.

6 Q. You know that now?

7 A. Yes.

8 Q. You have other documents from Oracle on
9 your hard drive, do you not, sir?

10 A. Yes, I do.

11 Q. You took those documents with you from
12 Oracle when you left?

13 A. I never worked at Oracle, but I --

14 Q. You took documents from JD Edwards when
15 you left JD Edwards.

16 A. Yes.

17 Q. And you knew that you weren't supposed to
18 do that at the time.

19 PAGE 299:21 TO 299:23 (RUNNING 00:00:06.891)

20 A. No, I didn't know that at the time. I
21 thought if I owned the documents, I could use
22 the documents.

23 PAGE 301:06 TO 301:13 (RUNNING 00:00:17.499)

24 MR. HOWARD: Let's mark as Exhibit 215 a
25 document copyright 2008, Oracle and its

1 affiliates, with a watermark draft stamp.

2 - - -

3 (Whereupon, Grigsby-Exhibit 215,
4 Oracle document, Bates RSI03107621 to
5 -736, was marked for identification.)

6 PAGE 301:16 TO 302:19 (RUNNING 00:01:18.298)

7 Q. Mr. Grigsby, can you explain how Exhibit
8 215 came to be in your files?

9 A. I believe the way this was in my files is
10 I have another drive that I had to provide
11 counsel that was a backup drive.
12 And in my previous life with a business
13 partner, we had these documents for one of
14 the business partners I worked at. And as
15 such, that was on my hard drive -- or my
16 external drive, which I made -- I gave to the
17 attorneys for disclosure.

18 Q. How did you get this document?

19 A. I get this document -- one of my previous
20 jobs. I either took a class or I had this
21 document. I took many JDE classes. This
22 specific document, I don't recollect.

23 Q. Would it surprise you to know that there's
24 approximately 40,000 pages of Oracle
25 documents in your files produced in this

1 case?

2 A. Based on my past employment and the fact
3 that I use that drive as a backup drive, no,
4 it wouldn't surprise me.

5 Q. How many of those 40,000 pages would you
6 estimate you took from JD Edwards with you
7 when you left their employment with them?

8 A. There's no way for me to estimate that.

9 PAGE 302:20 TO 303:09 (RUNNING 00:00:26.980)

10 Q. Is it more than half?

11 A. No, sir, I would not say that.

12 Q. Would you say more than 10,000 pages?

13 A. I really don't know.

14 Q. Can you give me your best estimate?

15 A. No, because I haven't looked at it --
16 external backup drive for literally years.

17 Q. Did you download those documents from a
18 specific location when you left JD Edwards to
19 take with you?

20 A. Not to my recollection, no, sir.

21 PAGE 304:05 TO 304:24 (RUNNING 00:00:40.990)

22 Q. Do you from time to time go into your
23 stash of Oracle documents and use them as
24 part of your job at Rimini Street?

25 A. No, sir. That's a backup hard drive.

1 Q. Well, we know that you did in the case of
2 the sales presentation that you sent to Mr.
3 Slepko; isn't that right?

4 A. That is correct, yes, sir.

5 Q. All right. Are there other instances that
6 you can recall, as you sit here, under oath,
7 that you have from time to time used Oracle
8 documents in the course of your work at
9 Rimini Street?

10 A. Being that I've been with JD Edwards so
11 far -- so long, I'd have to say yes, there
12 probably was.

13 Q. You've done that from time to time?

14 A. Probably, yes, sir.

15 (End of deposition.)

16 THE COURT: Oracle's next witness, please.

17 MR. POLITO: Thank you, Your Honor.

18 We're going to play another videotaped
19 deposition from Beth Lester. At the time of the video she
20 was the group vice-president for service strategy and
21 PeopleSoft business analysis and quality assurance.

22 Ms. Lester was also testifying as a corporate
23 representative on the topic of a few specific fixes for
24 PeopleSoft software.

25 And there are no exhibits for this video.

1 THE COURT: And she was testifying as a
2 corporate representative of which entity?

3 MR. POLITO: Of Rimini Street.

4 THE COURT: Thank you.

5 MR. POLITO: Thank you, Your Honor. It's under
6 three minutes.

7 (Videotape deposition of Beth Lester played
8 as follows:)

9 PAGE 8:01 TO 8:09 (RUNNING 00:00:18.290)

10 "Q. Would you please state your full name for
11 the record?

12 A. Beth Jedelsky Lester.

13 Q. Are you employed at Rimini Street?

14 A. I am.

15 Q. What's your current position?

16 A. I'm currently the group vice president of
17 service strategy and PeopleSoft business
18 analysis and quality assurance.

19 PAGE 73:24 TO 74:25 (RUNNING 00:01:00.683)

20 Q. Now, as part of the tax and regulatory
21 updates that Rimini delivers, does it also
22 deliver documentation in addition to
23 combinations of the various objects that
24 we've been looking at?

25 A. Yes.

1 Q. What kind of documentation does it
2 deliver?

3 A. Documentation for the clients to help them
4 understand what is included in a particular
5 update.

6 Q. Does it deliver instructional
7 documentation?

8 A. Yes.

9 Q. Does that take the form of a Word
10 document?

11 A. Yes.

12 Q. Does it also deliver Excel documents?

13 A. Yes.

14 Q. What's in the Excel documents?

15 A. A listing of objects modified.

16 Q. With respect to the instructional
17 documentation, does Rimini use any portion of
18 documents previously prepared by Oracle or
19 PeopleSoft to generate that documentation?

20 A. Repeat the question, please?

21 Q. Sure.

22 Does Rimini Street use any portion of
23 documentation previously prepared by Oracle
24 or PeopleSoft to create its own documentation
25 that it sends out with its tax and regulatory

1 updates?

2 PAGE 75:03 TO 75:03 (RUNNING 00:00:01.356)

3 THE WITNESS: Yes.

4 PAGE 94:06 TO 94:17 (RUNNING 00:00:37.232)

5 Q. Are fixes sometimes tested in one
6 environment but not tested for each customer
7 that receives that fix?

8 A. Are you asking if we test a fix for every
9 client we are delivering the fix to?

10 Q. For -- yeah.

11 After the unit testing is done, and you're
12 doing individual testing, does it sometimes
13 happen that you would test once for a group
14 of customers but not for each of those
15 individual customers?

16 A. In the individual update testing phase,
17 that is correct.

18 PAGE 94:21 TO 94:25 (RUNNING 00:00:12.288)

19 Q. How do you determine where to test,
20 individually test that fix for a group of
21 customers?

22 A. You're not testing a fix for a group of
23 customers, you're testing a fix for a
24 particular client.

25 PAGE 95:02 TO 95:15 (RUNNING 00:00:39.545)

1 And then you're sending that fix out to
2 additional customers without doing additional
3 individual testing in each of those
4 customers' environments; true?

5 A. It is possible that multiple customers may
6 be receiving the same developed code. If
7 that is the case, the quality assurance team
8 makes a determination as to whether it's
9 necessary to test in each of those client
10 environments or just one, two, three, et
11 cetera.

12 Q. Right.

13 And that would be determined according to
14 whether those customers had similar code?

15 A. Yes."

16 (End of deposition.)

17 THE COURT: Ms. Dunn, Oracle's next witness,
18 please.

19 MS. DUNN: Thank you, Your Honor. Oracle calls
20 Ed Yourdon.

21 COURTROOM ADMINISTRATOR: Please raise your
22 right hand.

23 You do solemnly swear that the testimony you
24 shall give in the cause now before the Court shall be the
25 truth, the whole truth, and nothing but the truth, so help

1 you God?

2 THE WITNESS: I do.

3 COURTROOM ADMINISTRATOR: Please be seated.

4 Please state your name for the record and spell
5 your name for us.

6 THE WITNESS: My name is Edward Yourdon;
7 Y-o-u-r-d-o-n.

8 COURTROOM ADMINISTRATOR: Please tell us your
9 city and state of residence.

10 THE WITNESS: My city and state of residence is
11 New York City, New York.

12 EDWARD YOURDON

13 called as a witness on behalf of the
14 Plaintiffs, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. DUNN:

17 Q. Mr. Yourdon, where do you work?

18 A. I work for a technical consulting firm called
19 Nodrouy, Incorporated, in New York City.

20 Q. Okay. Where did you get the name Nodrouy?

21 A. Nodrouy is the spelling of my own surname backwards.

22 Q. And what does Nodrouy do?

23 A. Nodrouy is a technical consulting firm that provides
24 guidance and advice for both technical and management
25 people in the IT department of medium- and large-size

1 companies.

2 Q. And what do you do for Nodrouy? What are your
3 responsibilities?

4 A. I am the chief technical officer. I'm the one who
5 does the technical work associated with providing the
6 advice and guidance to our clients.

7 Q. And please explain to the jury your educational
8 background.

9 A. I received a bachelor's degree in applied
10 mathematics from MIT in 1965.

11 Subsequent to that, I carried out graduate
12 courses in both electrical engineering and computer science
13 at MIT and the Polytechnic Institute of New York.

14 Q. And I know that you have a wealth of professional
15 experience. Please take the time to describe that for the
16 jury.

17 A. I began working in the computer field actually while
18 I was in college, so I've been in the computer field for a
19 little over 50 years at this point.

20 Along the way I've written some 28 textbooks and
21 a little under 600 computer-related articles.

22 And I've worked as a technical person initially
23 and then progressing up through the ranks of consulting and
24 management until my current position at Nodrouy,
25 Incorporated, which also includes roughly 12 years during

1 which I served as a member of the board of directors of an
2 Indian outsourcing firm called IGATE.

3 Q. In the course of your work, what experience have you
4 had specifically with enterprise software, which is what
5 we're talking about in this case?

6 A. I've had a great deal of experience with enterprise
7 software working with individual project managers who were
8 developing or deploying an enterprise software system for
9 one local area of their company, as well as providing
10 management guidance for the overall project management of
11 such projects, and also strategic management advice for
12 senior executives in companies who were looking to develop
13 and deploy these systems across the company or around the
14 world.

15 Q. And when you give advice or act as a consultant,
16 what sorts of companies do you work for?

17 A. Most of the companies that I work with are the
18 so-called blue-chip, Fortune 500 companies in the private
19 sector, you know, the aerospace companies, banks, insurance
20 companies and things of that nature, as well as the public
21 sector organizations at the state and federal level,
22 government agencies of many kinds.

23 Q. So I want also to be clear, when you say consulting,
24 you don't mean what you're doing today as an expert, as a
25 litigation expert, you mean consulting giving advice. I

1 just want to make sure we're clear on the --

2 A. Yes, yes, I do mean technical advice.

3 Initially it was for software developers who
4 wanted better ways of programming or designing their
5 software, I've written a number of books in that area. And
6 subsequent to that, it was management local device --
7 advice, but not the sort that we're talking about here in
8 the courtroom.

9 Q. All right. Got it.

10 So when you act as a consultant, has any of that
11 work involved the specific software at issue in this case,
12 so, PeopleSoft, JD Edwards, Siebel, and Oracle Database?

13 A. Yes. Yes, it does.

14 Q. And what other enterprise products have you
15 consulted about in addition to Oracle software?

16 A. Well, I've consulted with companies on a number of
17 enterprise software products.

18 They usually are regard to this falling into two
19 categories or tiers.

20 The top tier, the largest ones, are the various
21 Oracle-related products that we've been hearing about, as
22 well as the products from SAP, the German software company.

23 More recently, most people feel that the
24 products from Salesforce, or salesforce.com, have entered
25 that top category.

1 In addition to that, especially for the
2 medium-size companies, I've worked with enterprise software
3 products from companies such as Great Plains Software, a
4 company called that Mad Vision, and those first two are
5 actually part of Microsoft, as well as enterprise software
6 products from Lawson, L-a-w-s-o-n, and then there's one
7 other one, Baan, B-a-a-n, which, depending on your opinion,
8 is either in the first tier or the second tier.

9 Q. And I know you said that you have professional
10 experience of 50 years. How long have you been consulting
11 specifically about enterprise software?

12 A. Approximately 25 years.

13 Q. Have you ever advised one of your clients to select
14 Oracle or other enterprise software companies?

15 A. Well, Oracle and its related companies, yes. Yes.

16 Q. Okay. And about how often, in all your time as a
17 consultant, would you recommend Oracle as the software
18 vendor to select?

19 A. Approximately half the time.

20 Q. Okay. Have you ever recommended to clients that
21 they switch away from Oracle to somebody else like SAP?

22 A. For -- for the software itself?

23 Q. Yes.

24 A. Yes. Occasionally. Infrequently, but occasionally,
25 yes.

1 Q. And how about switching from another vendor to
2 Oracle?

3 A. Yes, the same thing, it's infrequent and occasional,
4 but, yes.

5 Q. Have you previously worked for Oracle as a
6 litigation consultant or as a testifying witness as you're
7 doing today?

8 A. Yes, on two or three occasions, yes.

9 Q. And have you ever worked for Oracle as an employee?

10 A. No. No, I have not.

11 Q. Okay. Do you have experience as an expert in other
12 cases that dealt with enterprise software?

13 A. Yes, I do.

14 Q. Can you just briefly describe that.

15 A. I've been involved in a number of cases where the
16 disagreement between the parties involves the question of
17 whether the enterprise system was developed or deployed and
18 solved quickly enough within the appropriate budget,
19 whether it operated satisfactorily and other disagreements
20 of that sort.

21 That's been the majority of the cases that I've
22 been involved with.

23 Q. Have you also consulted with companies about support
24 for enterprise software?

25 A. Yes, I have.

1 Q. Okay. And is that also the same amount of time,
2 about 25 years?

3 A. Approximately the same time, perhaps a year or two
4 less since that decision is usually made a year or two
5 after they actually select their software.

6 Q. Okay. And what sort of support decisions have you
7 consulted with clients about?

8 A. Well, the support decisions usually involve the
9 question of whether they should stay with the original
10 vendor from whom they acquired their software itself, or
11 whether they should consider an alternate service provider,
12 or, in the extreme case, whether they should consider
13 self-support.

14 Q. And when you discuss support with your clients, what
15 are the key factors you discuss with them?

16 A. The key factors are usually the cost and the
17 availability of a reliable service provider, whether it's
18 the same one they've been using or an alternate.

19 Q. Why are those factors the primary factors?

20 A. Well, those factors are the primary factors -- well,
21 partly because the amount of money involved in it from a
22 price perspective is usually fairly significant.

23 But the question of a reliable alternate service
24 provider is particularly important given the
25 mission-critical nature of these systems, the fact that

1 they simply cannot live without them.

2 Q. And is this idea of having a reliable alternative
3 provider sometimes called offering vendor-level support?

4 A. Yes, it is. The service provider that they may be
5 considering needs to provide the same kind of vendor-level
6 support that they've already been enjoying with the
7 enterprise software.

8 Q. Okay. And if you could explain in just a little
9 more detail what you mean by vendor-level support. What
10 does that include generally?

11 A. Well, vendor-level support is kind of a catchall
12 phrase that includes a number of activities. I'm not sure
13 I'll be able to give you an exhaustive list.

14 But it involves such things as bug fixing,
15 security patches, updates for tax changes and regulatory
16 changes, updates to either refine or improve existing
17 features that the software product may have, and
18 ultimately, every couple of years, typically the release of
19 a completely new version of the software usually with major
20 new features and functions.

21 Q. And in your experience, why, if at all, is
22 vendor-level support important to customers?

23 A. The primary reason the vendor-level support is so
24 important is because of this point I mentioned a moment
25 ago, these are mission-critical applications without which

1 typically most of these businesses would grind to a halt
2 and be unable to carry out their day-to-day business.

3 MS. DUNN: Your Honor, we request permission to
4 proceed with Mr. Yourdon as an expert witness in enterprise
5 software and support, along with customer decisionmaking
6 about enterprise software and support.

7 THE COURT: You may proceed.

8 MS. DUNN: Thank you.

9 BY MS. DUNN:

10 Q. All right. Mr. Yourdon, let's talk specifically
11 about the issues in this case.

12 Would you -- you were given an assignment in
13 this case. How would you describe that general assignment?

14 A. The assignment that I was given consisted of three
15 major questions to address.

16 The first one was to identify and prioritize the
17 criteria and factors the customers normally evaluate when
18 they are selecting a software support provider.

19 The second question that I investigated was to
20 determine why the customers of Rimini chose not to renew
21 the software support agreement that they typically had with
22 Oracle previously.

23 And the third one was to determine whether those
24 customers would have stayed with Oracle, or purchased
25 Oracle support, in the absence of Rimini's support

1 offerings.

2 Q. And before we talk about your findings, what
3 material did you review in the course of your work in this
4 case?

5 A. I reviewed an enormous number of documents which, on
6 this particular slide, I've organized into four categories.

7 They were depositions, some of which we've
8 recently been seeing on video but which I reviewed on
9 paper, from employees of the parties, but they're also,
10 interestingly, from some of the customers, actual customers
11 who were using the software.

12 I reviewed a number of documents associated with
13 a much larger group of customers, not just the 17 who were
14 deposed, but roughly 200 customers, Oracle customers, who
15 were using Rimini support services.

16 I reviewed an enormous number of documents from
17 both Oracle and Rimini, emails, PowerPoints, internal
18 documents and so forth.

19 And, finally, I reviewed a little over a dozen
20 publications typically from some of the leading industry
21 analyst firms.

22 Q. So that's a lot of materials.

23 As you reviewed them, was there something in
24 particular that you focused on?

25 A. Well, the primary thing that I was doing with the

1 review of all these documents was simply confirming the
2 experience that I have gained myself as a consultant
3 working with these companies out in the field over a period
4 of 50 years.

5 But, also, I was looking at them to see whether,
6 in fact, all these customers behaved in a similar fashion.

7 Q. And when you say customers, customers involved in
8 this case?

9 A. Yes, customers involved in this case, yes.

10 Q. Okay. In your experience, do customers generally
11 renew their support contracts with the original company
12 that sold them the software?

13 A. Yes, that has been my experience predominantly.

14 Q. And is the main reason for that -- well, what's the
15 main reason for that?

16 A. Well, the main reason, as I've already testified, is
17 the need to have a reliable service provider who can keep
18 their mission-critical systems running in a reliable
19 fashion.

20 Q. All right. So I'd like to put up on the screen your
21 next slide.

22 Is this a slide that you prepared that reflected
23 the third-party support market as you understood it from
24 your work in this case?

25 A. Yes, it is.

1 Q. Okay. So we're going to talk about all of these
2 names that you see on the left, but the first thing is that
3 it seems that Rimini Street and TomorrowNow are in a
4 separate category. Why did you do that?

5 A. I separated them in a thick black line, as you can
6 see on this slide, because, unlike the others, they offered
7 services for all three of the Oracle products, that is,
8 PeopleSoft, JD Edwards, and Siebel, in contrast to the
9 others, and also because they were substantially larger
10 than the other support providers.

11 And, thirdly, because, unlike the other support
12 providers, they represented themselves and marketed
13 themselves as a replacement for the vendor, Oracle in
14 particular, as opposed to just being a consulting firm that
15 could help on some of the day-to-day activities.

16 Q. So briefly before we talk about these in detail,
17 what is CedarCrestone?

18 A. CedarCrestone was a company that provided consulting
19 support for PeopleSoft enterprise products.

20 Q. And Spinnaker?

21 A. Spinnaker was a -- is, I believe, a Denver-based
22 company that provides support primarily for JD Edwards
23 enterprise software products.

24 Q. And NetCustomer?

25 A. NetCustomer was a very small support provider that

1 claimed to provide service for all three of the products
2 but, as I say, very small, only about five customers.

3 Q. And in the course of your consulting work, were you
4 familiar with all of these companies?

5 A. I was familiar with all but NetCustomer. I had not
6 heard of them or worked with them previous to this case.

7 Q. Are you now familiar with them after you -- after
8 all the review of the documents you did on this case?

9 A. Yes, yes, I have become familiar, again, through
10 review of documents and searches on the Internet and so
11 forth.

12 Q. Okay. And are you aware of any other third-party
13 support options that are not listed on your chart?

14 A. Yes, there are another five or six that are even
15 smaller than NetCustomer, Clay Associates, Abtech, which is
16 A-b-t-e-c-h, and a few others.

17 Q. So one of the questions in this case that relates to
18 the question of damages is whether customers would have
19 gone to another third-party support provider if Rimini
20 Street did not exist.

21 And this is -- I know that the way you frame
22 this question is to ask whether any of these are a viable
23 alternative to Rimini Street.

24 So I just want to make clear, because we're sort
25 of switching topics a little bit in the case to damages,

1 whether answering that question was part of your
2 assignment.

3 A. Yes, it was.

4 Q. Okay. So you were tasked with figuring out are any
5 of these a viable alternative to Rimini Street if Rimini
6 Street didn't exist.

7 A. Yes, that was part of my assignment.

8 Q. Okay. Did you draw a general conclusion as to that
9 question?

10 A. My general conclusion was that none of the companies
11 that you see on this page -- taking out Rimini Street, you
12 know, for the purpose of this discussion, none of the
13 others represented a viable alternative.

14 Q. Okay. And is that what is reflected in the column
15 all the way on the right?

16 A. Yes, that's why I put no for all of the entries in
17 the third column.

18 Q. Okay. So please explain to the jury generally how
19 you came to that conclusion. What was the basis for your
20 opinion there?

21 A. Okay. I came to that conclusion because I concluded
22 that TomorrowNow was an infringing provider of support
23 services and therefore was not a viable alternative.

24 I came to that conclusion also because I was
25 instructed by counsel to consider CedarCrestone.

1 MR. RECKERS: Objection, Your Honor. Could we
2 approach?

3 THE COURT: You may.

4 (Sidebar conference held as follows:)

5 THE COURT: Mr. Reckers, go ahead.

6 Mr. RECKERS: I believe the witness is about to
7 testify that he --

8 THE COURT: You need to speak a little louder.

9 MR. RECKERS: I believe the witness is about to
10 testify that he was told to consider CedarCrestone as an
11 infringer, infringing party. I don't think that's proper,
12 I don't think that's consistent with Your Honor's
13 statements this morning.

14 If -- it seemed that Your Honor said that he
15 could say that he considered them. That he did not
16 consider them to be noninfringing alternatives, I think, is
17 a far cry from saying that they are infringers.

18 THE COURT: Okay. He hasn't gotten to that
19 point.

20 Ms. Dunn, help me out.

21 MS. DUNN: I thought the list was consistent
22 with your ruling this morning, Your Honor, which is to say
23 that -- which is the truth, he was instructed by counsel to
24 consider them an infringing alternative.

25 He was expressly instructed after Your Honor's

1 ruling to stick to specifically what the Court had allowed,
2 and that's what he's going to do.

3 THE COURT: All right. I'll expect that that
4 will be what will occur.

5 I haven't heard a violation at this point with
6 regard to TomorrowNow. I would hope that his testimony not
7 be significantly beyond the type of testimony that's been
8 uttered so far with regard to TomorrowNow.

9 MS. DUNN: I can assure the Court that he has
10 been so instructed.

11 THE COURT: All right.

12 MS. DUNN: If defense counsel decides to ask him
13 about it, he would say more. But if they don't, this is
14 where they are.

15 THE COURT: All right.

16 MR. RECKERS: To be clear, your Honor, your
17 ruling is that he would be allowed to say that counsel
18 instructed him that CedarCrestone was infringing; is that
19 correct?

20 THE COURT: Yes, I would allow it to go that
21 far, and I don't want it to go any further.

22 MR. RECKERS: Your Honor, and I don't -- I don't
23 want to interrupt counsel's examination, but I also want to
24 make a record. So I don't want to stand up and move to
25 strike when he says that. Can I get a -- I don't know how

1 to do this procedurally, but --

2 MS. DUNN: Well, it's possible the Court could
3 instruct the witness that the Court's understanding is that
4 he was instructed by counsel to consider them an infringing
5 alternative, and then the witness doesn't have to say any
6 more. That would do it.

7 He was quite specifically instructed to say this
8 one sentence, which is what he was -- you know, how he was
9 advised by counsel in preparing his report.

10 So I can assure you, unless something totally
11 crazy is happening, that that's what's going to happen
12 here.

13 THE COURT: Okay. Two points here.

14 First of all, you do not need to move to strike,
15 unless you feel that I've clearly missed something.

16 I will -- if I feel that something is stated by
17 him that I felt went beyond what the Court's, frankly,
18 broad ruling was this morning, I'll step in and make an
19 appropriate statement.

20 And I -- I appreciate, Ms. Dunn, you being
21 mindful of that as well.

22 MR. RECKERS: Thank you, Your Honor.

23 MS. DUNN: Thank you.

24 THE COURT: Thank you.

25 (Sidebar conference concluded.)

1 THE COURT: All right. Go ahead, please,
2 Ms. Dunn.

3 MS. DUNN: Thank you, Your Honor.

4 BY MS. DUNN:

5 Q. Mr. Yourdon, I had asked you why you did not
6 consider CedarCrestone a viable alternative to Rimini
7 Street, and you were answering that question.

8 A. Yes, I was instructed by counsel to consider
9 CedarCrestone to be an infringing provider and therefore
10 not viable.

11 Q. Let's move on to Spinnaker. What about Spinnaker?

12 A. I considered Spinnaker not to be a viable
13 alternative partly because it supports only one of the JD
14 Edwards -- of the Oracle products, but also because it did
15 not satisfy the combination of factors that I consider
16 important for being viable, that is, a combination of
17 technical, business, and legal risks.

18 Q. Since you mention the factors that you considered,
19 which are business risk, technical risk, and legal risk, is
20 that what you said?

21 A. Yes.

22 Q. Okay. If you could briefly describe what you mean
23 by those to the jury.

24 A. The question of technical risk is simply whether any
25 support provider can provide the necessary technical

1 services to carry out all the activities I described a
2 little bit earlier, fixing bugs, adding new features as
3 necessary, carrying out tax and regulatory updates, et
4 cetera.

5 So a technical risk includes not only the
6 question of whether the vendor has the breadth and depth of
7 technical expertise to do that, but also, interestingly,
8 particularly for security patches, the question is whether
9 they have the source code, the actual programming code that
10 makes it possible for them to perform that technical
11 activity.

12 The business risks are primarily the question of
13 whether the company has a reasonable chance of surviving in
14 the marketplace and growing, or whether they run the risk
15 of disappearing and possibly going bankrupt.

16 And the legal risks include questions of whether
17 the service provider would be in compliance with the
18 copyrights and license agreements that the enterprise
19 software product owner might have, as well as being in
20 general compliance with any other regulations and laws that
21 they're required to adhere to.

22 Q. Okay. So we've already discussed TomorrowNow and
23 CedarCrestone and why you didn't consider them to be viable
24 alternatives.

25 Could you apply your -- the risk analysis you

1 just discussed to Spinnaker and NetCustomer.

2 A. In the case of Spinnaker, the technical risk again
3 was could they be expected to have the necessary depth and
4 breadth of technical expertise that might be required to
5 fix any problems that occurred.

6 Could they expected -- could they be expected to
7 have all of the source code necessary for security patches,
8 et cetera.

9 And, really, for me predominantly was the
10 business risk of whether one wants to entrust
11 mission-critical software to a vendor that at the time had
12 on the order of 100, maybe 120, customers, most of whom had
13 not been acquired through the normal growth of going out to
14 look for new customers by virtue of it being handed to them
15 when TomorrowNow discontinued its operations, as well as
16 essentially being handed to them through an acquisition
17 that had taken place.

18 So I considered Spinnaker not to be a viable
19 alternative from a business perspective primarily.

20 And to some extent the same is true for
21 NetCustomer, even more extremely so because, as I said
22 earlier, they only had a handful, about five customers,
23 which suggests obviously that they didn't have very much
24 technical depth or experience.

25 And as for the business risk, indeed, they

1 discontinued their operations in 2010 so that they were not
2 viable or nonviable, they simply didn't exist as an
3 alternative provider after that point.

4 Q. And you had said before that Rimini Street and
5 TomorrowNow both marketed themselves as offering
6 replacement for vendor-level support. Is that true of
7 CedarCrestone, Spinnaker, and NetCustomer?

8 A. In my experience, no. They marketed themselves
9 primarily as consultants, support people, with particular
10 expertise in certain areas of business such as supply
11 chain, but not as a replacement.

12 MS. DUNN: Okay. So I'd like to show you a
13 document which perhaps is in front of you. There's only
14 one document, so you don't get a binder. It's Plaintiffs'
15 Exhibit 1333. And I believe this is preadmitted?

16 COURTROOM ADMINISTRATOR: No.

17 MS. DUNN: No.

18 MR. RECKERS: No objection.

19 THE COURT: It's admitted.

20 MS. DUNN: Thank you, Your Honor.

21 (Plaintiffs' Exhibit 1333 received into
22 evidence.)

23 BY MS. DUNN:

24 Q. Let's just take a look at Plaintiffs' Exhibit 1333.

25 Is this a document that you considered in

1 preparing your report?

2 A. Yes, it is.

3 Q. Okay. So in this email it looks like a Rimini
4 Street senior account executive is explaining the support
5 services of Spinnaker and NetCustomer.

6 So I'd like to go to the place on page 1 where
7 it starts talking about NetCustomer, which I think may be
8 lower than this. Do you see that?

9 A. Yes, I do.

10 Q. Okay. So this says,

11 "You mentioned that you have already looked at
12 NetCustomer and Spinnaker."

13 A. Yes.

14 Q. "When the City of Eugene, Oregon selected Rimini
15 Street, they also looked at and rejected NetCustomer.
16 NetCustomer uses an offshore model with staff based in
17 India. They do general consulting but don't offer a true,
18 well-defined maintenance service. We've been unable to
19 determine whether they have ever actually developed and
20 delivered any tax and regulatory updates. We seldom
21 encounter them. It is important to note that all Rimini
22 staff is USA based. We have staff in over half the
23 states."

24 Is this consistent with your experience and
25 opinion about NetCustomer?

1 A. It is. And it illustrates one of the legal risks
2 that I talked about before in terms of general government
3 regulations.

4 It's common for there to be regulations against
5 carrying out support work involving sensitive employee
6 information offshore, outside the United States, and
7 NetCustomer was an India-based company.

8 Q. All right. So let's move on to Spinnaker which is
9 also discussed by a Rimini Street senior account executive
10 in this email.

11 So it says,

12 "Spinnaker is another story. We see them
13 occasionally. They put on an excellent marketing front.
14 They appear to have cloned from the Rimini Street program
15 for their marketing materials. They write a clear and
16 compelling business proposal. But, a company has to be
17 able to deliver on the proposal. The difficulties with
18 them arise in the details, and they are twofold. First
19 Spinnaker gained virtually all of its customer base from
20 TomorrowNow. They did not grow organically."

21 And almost none of the senior management moved
22 with them.

23 And then I think we probably need to go to the
24 next page to figure out what the second issue is.

25 So it says,

1 "The maintenance business requires a discipline
2 and structure that takes years to develop. Spinnaker is a
3 newborn in that critical area."

4 Is this consistent with what you found about
5 Spinnaker?

6 And lower down it actually says -- it identifies
7 the more significant problem with Spinnaker as being
8 long-term viability.

9 A. Yes, it is.

10 Q. Okay. Please explain.

11 A. Well, in -- as I suggested earlier, Spinnaker
12 acquired a significant number of its customers, about 75,
13 when TomorrowNow discontinued its operations and another 30
14 in an acquisition.

15 So the kind of organic growth that Mr. Potts is
16 referring to here of going out into the battlefield and
17 winning competitive competition for new customers had not
18 been carried out by Spinnaker.

19 And given the relatively small number of
20 companies, about a hundred or so, it would raise serious
21 questions in the mind of any customer considering them as
22 an alternative.

23 Q. It also says, "As near as we can tell, Spinnaker
24 operates at a loss." Would that be consistent with
25 something you might expect?

1 A. Yes. If they're operating at a loss, and if they're
2 a small company, having run a small consulting firm myself,
3 I know that this can raise some significant concerns about
4 long-term viability.

5 Q. Okay. Could customers in this case have supported
6 themselves, what's called self-support?

7 A. In my experience, the realistic answer is no. It is
8 sometimes considered, but it's -- I've never recommended
9 it, and it's almost never a viable option.

10 Q. In your experience as a consultant, have you ever
11 recommended self-support?

12 A. No, I never have recommended self-support for these
13 enterprise software products.

14 Q. Why not?

15 A. Because of the issues we've already talked about.

16 If the self-support is being carried out, as it
17 usually is, by just one or two people, almost by definition
18 they don't have the technical depth that a vendor with
19 thousands of people would have.

20 They don't usually have the access to the source
21 code.

22 And from a business risk perspective, of course,
23 you have to worry that they might disappear for any number
24 of personal reasons, including retirement and just not be
25 available.

1 Q. Okay. So we've just discussed your conclusion that
2 there were no viable alternatives in the third-party
3 support market to Rimini Street.

4 So, in your opinion, and based on your
5 experience, what would Oracle's customers have generally
6 done if Rimini Street had not existed?

7 A. In my opinion, what they generally would have done
8 is renewed their support at the same kind of historical
9 renewal levels that Oracle had already been enjoying.

10 Q. Okay. So this is an important question, and I'd
11 like you to explain why you say that to the jury.

12 A. Well, I say that because whatever other issues a
13 company might consider, at the end of the day they have to
14 ask is there anything else?

15 You know, it's fine to say I might be attracted
16 for this reason or that reason, but without a viable
17 alternative, you might stop the support if you're going
18 bankrupt or if you're being acquired by somebody else or
19 other external factors.

20 But in the absence of those external forces,
21 you're going to stay with the same enterprise support
22 provider.

23 Q. Okay. And is that consistent with your experience?

24 A. Oh, it definitely is consistent with my experience
25 in the industry.

1 Q. And are you generally familiar with Oracle's
2 retention rates for its support customers?

3 A. Yes, I am generally familiar with it. In fact, I
4 think we've seen one or two charts already which I had
5 seen. It's above 90 percent, close to 95 percent.

6 Q. Okay. So you just testified that customers would
7 not have left Oracle for Rimini if Rimini didn't exist.

8 I want to ask you, since Rimini did exist, why
9 did the customers in this case choose to go to Rimini? Did
10 you look at that question?

11 A. I did look at that question, and I -- in my
12 experience, they decided to go with Rimini at the end of
13 the day for two primary reasons that we've summarized on
14 this demonstrative.

15 One was the promise of a significant price
16 discount, and the other was the promise made by Rimini of
17 vendor-level support.

18 Q. And what -- when you say promise of vendor-level
19 support, are you familiar with what Rimini promised the
20 customers that they could do in comparison to what Oracle
21 did?

22 A. My understanding is that there were one or two
23 issues such as security that they may not have talked about
24 very much at all, but fundamentally they promised
25 everything that Oracle did and more.

1 Q. In this case there's already been a fair amount of
2 discussion about the 50 percent or less discount. Just
3 take a second to explain why you've combined that here with
4 the promise of vendor-level support. What's the importance
5 of that?

6 A. I think we've heard throughout this case that these
7 enterprise software products are expensive, and the
8 maintenance and support is expensive, so that a marketing
9 presentation or proposal that involves saving a
10 considerable amount of money is enough to gain one's
11 attention.

12 But unless that's also combined with reliable
13 technical service, at the end of the day a company simply
14 cannot take the risk of switching.

15 Q. Okay. So that has to be also promised as well,
16 you're saying?

17 A. The two together are important.

18 If you make a promise of vendor-level support at
19 the same price, it's certainly not going to gain a lot of
20 attention. But if you offer a significant price discount
21 but don't provide the vendor-level support, then the
22 alternative really isn't there.

23 Q. All right. Let's move on to another topic, which is
24 one of Oracle's claims in this case is that Rimini Street
25 interfered with its customer relationships.

1 So returning to what we talked about at the
2 beginning, which is the process that customers go through
3 when deciding on support, when a customer is evaluating a
4 third-party support provider, what kinds of questions do
5 they ask?

6 A. They ask a number of questions, the first two of
7 which are virtually the same as you saw in the previous
8 demonstrative.

9 But they want clarification and details in
10 writing to fully understand the pricing policies and the
11 technical capabilities they need.

12 The last three bullet points that you see on
13 this demonstrative are often regarded as due diligence.

14 They ask for references, they ask the vendor --
15 the potential third-party support provider whether the
16 support is in compliance with the software license
17 associated with the software product, and then they'll
18 generally ask whether the support and the overall business
19 model is legal.

20 Q. So if a third party makes representations about the
21 legality of their business, do customers rely on those
22 representations from customers?

23 MR. RECKERS: Objection.

24 THE WITNESS: That certainly has been my
25 experience, especially if they --

1 MR. RECKERS: Objection. Beyond the scope of
2 the report and foundation.

3 MS. DUNN: I believe this is covered in
4 paragraph 55 of the report.

5 THE COURT: Based on that, I'll allow him to go
6 forward and would reconsider a motion to strike by
7 Mr. Reckers in the event that you feel that that has
8 occurred.

9 MR. RECKERS: Thank you, Your Honor.
10 BY MS. DUNN:

11 Q. Mr. Yourdon, if a third party makes representations
12 about the legality of their business, do customers rely on
13 such representations?

14 A. That has been my experience, especially if the
15 representation comes from a senior executive of the firm,
16 and especially if it's in writing.

17 Q. Okay. And if the third-party support provider says,
18 "no, sorry, we can't provide the support legally," in your
19 opinion, would the customer move forward?

20 A. No. In my opinion, they would not.

21 Q. In this case, are you aware whether customers asked
22 Rimini Street about the legality of their support services?

23 A. Yes, I am. In the deposition testimony that I
24 reviewed from 17 customers, it was a very common question.

25 Q. Did you also see documents where Rimini Street

1 provided assurances to customers that it was providing
2 support legally?

3 A. Yes, I did.

4 Q. Let's switch gears to this thing in the middle of
5 your slide about references. How important are references
6 to customers?

7 A. In my experience, they are extremely important for
8 companies that are considering a selection -- or a new
9 vendor, particularly, again, for mission-critical
10 applications. It's not as if they can shrug and walk away
11 from it.

12 Q. And in the course of your review, did you also see
13 evidence that providing references was part of Rimini
14 Street's practice for soliciting customers?

15 A. Yes, I did. Yes, I did.

16 Q. Okay. In your opinion, and based on your
17 experience, would these customers have provided references
18 if Rimini Street had told them that they were in violation
19 of copyright laws?

20 A. No. And, again, that was a question that was raised
21 and that I saw in the deposition testimony from the 17
22 customers.

23 Q. All right. So taking a look, then, at all these
24 questions on your list, if customers had asked a
25 combination of any of these questions, and in particular

1 the last three, and the answer had come back no, would they
2 have gone to Rimini Street?

3 A. No, I believe they would not have.

4 MS. DUNN: Your Honor, I have no further
5 questions for the witness at this time.

6 THE COURT: All right.

7 Cross-examination?

8 CROSS-EXAMINATION

9 BY MR. RECKERS:

10 Q. Good morning, Mr. Yourdon.

11 A. Good morning, counsel.

12 Q. My name is Rob Reckers. I've got a few questions
13 for you.

14 Before I get started, do you happen to have a
15 copy of your report?

16 A. I don't have one with me.

17 MR. RECKERS: With the judge's permission, I'd
18 like to pass up the witness a copy of his report because
19 I'll be asking questions out of it.

20 THE COURT: All right. Again, give that to my
21 court clerk, please.

22 BY MR. RECKERS:

23 Q. Now, Mr. Yourdon, in your opinion, it was Rimini's
24 promise of vendor-level support at a significantly lower
25 price than Oracle that caused customers not to renew their

1 support with Oracle; correct?

2 A. Yes, that's my opinion.

3 Q. Okay. And you hold yourself out as a professional
4 computer consultant, sir?

5 A. Yes, I do.

6 Q. And even though, as Ms. Dunn mentioned, that we've
7 moved on to generally the damages phase of the plaintiffs'
8 presentation, you, sir, don't hold yourself out as an
9 expert in finance or economics, do you, sir?

10 A. No, I don't.

11 Q. And though you're a technical consultant, and we've
12 heard some testimony in this case about Rimini's technical
13 operations, you've not offered opinions in this case as to
14 how Rimini's specific technical processes impact Rimini's
15 ability to offer 50 percent off Oracle's pricing; is that
16 correct?

17 A. That's correct.

18 Q. Okay. Now, you mentioned in your direct testimony,
19 sir, that you reviewed several analyst reports for some
20 analyst firms; is that correct?

21 A. Yes, that's correct.

22 Q. And let me ask you about a couple of those. Are you
23 familiar with the firm Gartner?

24 A. Yes, I am.

25 Q. And you agree with me that Gartner is one of the

1 largest and well-respected analyst firms in the country?

2 A. Yes.

3 Q. And did you review any Gartner reports in connection
4 with your expert testimony today?

5 A. My recollection is that I did, yes.

6 Q. Okay. And same question for Forrester.

7 Forester's -- are you familiar with the Forrester Analyst
8 Group?

9 A. Yes, I am.

10 Q. And would you also agree that Forrester is one of
11 the largest and well-respected analyst firms in the
12 country?

13 A. Yes, I would.

14 Q. And, sir, did you review any Forrester industry
15 reports in connection with your testimony today?

16 A. That's my recollection. We would have to look at
17 the list of documents to see which ones, but I believe so.

18 Q. Okay. And another thing you looked at was 17
19 deposition transcripts from Rimini customers; correct?

20 A. That's correct.

21 Q. Those are your case study clients?

22 A. That's correct.

23 Q. Okay. And you understood, sir, at the time of your
24 deposition at least, that Rimini had about 450 customers;
25 correct?

1 A. I don't recall the precise number, but that sounds
2 to be a decent ballpark.

3 Q. Okay. And so do you have any reason to dispute that
4 when you were deposed in 2012 that Rimini had about 450
5 customers, to your knowledge?

6 A. Again, I don't recall the precise number, but I
7 think that's the ballpark figure.

8 Q. Okay. So you looked at case studies, deposition
9 transcripts, for about 17 out of 450 customers; is that
10 fair?

11 A. Assuming that the 450 number is correct. It
12 certainly is fair and correct that I looked at only 17,
13 yes.

14 Q. Okay. And you didn't select those 17 customers from
15 Rimini's customer list, did you?

16 A. No, I did not.

17 Q. That's not a representative sample that you chose?

18 A. No.

19 Q. In fact, it was Oracle's attorneys that selected
20 those 17 customer deposition transcripts that you reviewed,
21 sir; isn't that correct?

22 A. My understanding is that they gave me the
23 transcripts of all that they deposed, but I believe that
24 they were the ones who chose which customers they did
25 depose.

1 Q. Right. Oracle took the deposition and gave you the
2 transcripts for 17 customers; correct?

3 A. Yes.

4 Q. And you don't know -- at the time of your deposition
5 you didn't know how Oracle's counsel selected those 17
6 customers out of Rimini's 400 some customers; is that
7 correct?

8 A. I don't recall. I believe that I had some
9 discussion with them as to how they chose them or where
10 they came from, but I don't recall at this point.

11 Q. Let me ask you about your opinion regarding
12 retention rates.

13 As I understood your testimony, sir, in your
14 opinion, about 95 percent of Rimini's customers would have
15 stayed with Oracle but for Rimini's promise of vendor-level
16 support at significant discount?

17 A. I -- that's approximately what I testified, or at
18 least what I intended to testify.

19 I intended to convey the impression that the
20 renewal would have been at approximately the historic
21 renewal rate levels which were in the range of 95 percent.

22 They vary, as we've seen from some of the
23 charts, from year to year and product to product, but it
24 was in that general range.

25 Q. Some years it's above 95 percent, some years it's

1 below the historical rate; correct?

2 A. That's correct.

3 Q. Okay. And so it would be fair to say, can we talk
4 about the historical rate as being about 95 percent?

5 A. And that was the -- that's how I intended to convey
6 that, yes.

7 Q. Yes, sir.

8 And so, just so we have a clear record, in your
9 opinion, about 95 percent of Rimini's customers would have
10 stayed with Oracle but for the promise of vendor-level
11 support at a significant discount by Rimini; correct?

12 A. Well, again, precisely what I was saying was that I
13 felt that they would renew it at the historic renewal rates
14 which I tried to summarize or characterize succinctly as
15 approximately 95 percent.

16 Q. Yes, sir.

17 In connection with that analysis, you did not
18 conduct any mathematical or statistical analysis regarding
19 whether Rimini's clients would have renewed at Oracle's
20 historical retention rate, did you?

21 A. No, I did not.

22 Q. Okay. You will agree with me, sir, if the
23 historical retention rate is about 95 percent, that means
24 that 5 percent of the customers leave Oracle every year;
25 correct?

1 A. Yes, from arithmetic, yes, I would agree with that.

2 Q. All right. So in the real world we know that
3 Rimini's customers are not part of the 95 percent that
4 stayed with Oracle, they're part of the 5 percent that
5 left; correct?

6 A. Yes.

7 Q. Okay. So let's talk about that 5 percent that left,
8 or that historically leaves.

9 Would you agree with me, sir, that historically
10 customers with certain characteristics are more likely to
11 leave vendor support?

12 A. No, I don't agree with that.

13 Q. Well, let's talk about what you said in your report.

14 Your report lists factors that customers weigh
15 when considering to renew their maintenance agreements; is
16 that correct?

17 A. Yes, it is.

18 Q. And I'm referring specifically, sir, to page 31 of
19 your report, paragraph 59.

20 A. Yes, I see that.

21 Q. So you list about eight factors that customers
22 consider when making support decisions?

23 A. Yes, that they consider or that they weigh. That's
24 the word that I chose. But, yes.

25 Q. Okay. We'll use your word, they weigh these factors

1 when they're making their support decisions; correct?

2 A. Yes.

3 Q. All right. Mr. Yourdon, we've got a slide, and
4 we're going to go through your different -- your factors
5 from your report.

6 The first factor which I think you talked about
7 on direct was price. So you agree with me, sir, that price
8 is a factor weighed when licensees consider whether to
9 renew their support decisions?

10 A. Yes, I do.

11 Q. Okay. And, in fact, in your report you list several
12 Rimini customers that, from your review of the evidence,
13 weigh price; is that fair?

14 A. Yes, that's fair.

15 Q. Okay. Now, the price isn't the only factor that you
16 wrote -- that you reflect in your report, is it, sir?

17 A. No, it's not.

18 Q. Okay. So the next factor is the reliability -- or
19 the availability of reliable alternatives; is that right,
20 sir?

21 A. Yes.

22 Q. Okay. And, again, this is a factor that is weighed
23 by licensees when considering whether to renew maintenance
24 agreements with their vendor; correct?

25 A. That's correct.

1 Q. And one of the alternatives that at least some of
2 Rimini's customers considered was self-support; correct?

3 A. Yes.

4 Q. And we talked about self-support a little bit during
5 your direct; correct?

6 A. That's correct.

7 Q. And self-support, just to remind the jury, is when
8 the licensee does not have a vendor, they support it
9 themselves with their own personnel; correct?

10 A. Basically that's correct, yes.

11 Q. And so, for example, referring to your case study
12 clients, Pitney Bowes is one of the clients that did not
13 renew it's Oracle support contract and elected to proceed
14 with self-support before going to Rimini Street; is that
15 correct?

16 I'll give you the page if you like.

17 A. Yes, please, if you could.

18 Q. Yes. It's page 70, it's paragraph 132.

19 A. Yes, I see that.

20 Q. So you agree with me that Pitney Bowes elected
21 self-support before going to Rimini Street?

22 A. Well, certainly I see that they elected to proceed
23 with self-support. I'm looking for the -- well, yes, in
24 the following paragraph, Pitney was unwilling to continue
25 running the risks associated with self-support and then

1 moved to Rimini.

2 Q. Exactly. They considered themselves lucky to be
3 able to have self-supported their product. Is that what
4 you said in your report?

5 A. They considered themselves lucky to have avoided the
6 consequences of the risks that they were experiencing with
7 self-support.

8 Q. All right. Nevertheless they self-supported
9 themselves in this case for about a year; is that right?

10 A. Yes, that appears to be the case.

11 Q. Okay. So let's move on to your third bullet point,
12 sir, which is stability or stagnation of the existing ERP
13 system; is that right?

14 A. Yes. So we're back to the list in paragraph 59?

15 Q. Yes.

16 A. Yes.

17 Q. And so the stability, stagnation of existing ERP
18 system is another factor that's weighed by licensees in
19 considering whether to renew maintenance agreements;
20 correct?

21 A. Yes.

22 Q. And there's evidence in this case that at least some
23 of the Rimini customers considered the stability or
24 stagnation of their existing system in making the decision
25 to leave Oracle support; correct?

1 A. Yes, they considered it.

2 Q. Okay. And the next factor, sir, is likelihood of
3 upgrading. So, sir, you list likelihood of upgrading to a
4 newer version as a factor that customers weigh in
5 considering whether to renew maintenance agreements with
6 ERP vendors; is that correct?

7 A. Yes, that's correct.

8 Q. And, again, there's evidence in this case that at
9 least some of the Rimini customers considered this factor
10 when -- the likelihood of upgrading to a newer version in
11 making their support decisions; correct?

12 A. Yes.

13 Q. Again, referring you, sir, to footnote 42 on page
14 32, you cite -- I'm sorry, I'll let you get there. Are you
15 there?

16 A. Oh, yes, I'm on page 32, but I thought you were
17 going to cite a footnote.

18 Q. It's footnote 42 on page 32.

19 A. Oh, got it, yes.

20 Q. Okay. So in this case you cite Hastings
21 Entertainment, J-Pac Travel, JB Hunt, Koch Business
22 Solutions, Sunrise Medical, and YUM Brands as Rimini
23 clients that considered the likelihood of upgrading to a
24 newer version in connection with their support decisions;
25 correct?

1 A. Yes, that's correct.

2 Although ultimately all customers, all
3 companies, in my experience, upgrade. It's simply a
4 question of whether it's this year or next year, you know,
5 or a couple years further down the road.

6 Q. Right. In this case, these customers left Oracle
7 support with consideration to their upgrade plans; correct?

8 A. Let's see. We'll need to look at the footnotes to
9 see whether that --

10 Q. Footnote 42, sir?

11 A. Yeah, footnote 42 says that they considered this
12 factor. I didn't see the closing of the loop, so to speak,
13 indicating that those companies had, in fact, gone to
14 Rimini because that -- that term had to be a determinative
15 factor. I certainly agree that it was a factor that they
16 weighed.

17 Q. Yes, sir. And that was my question.

18 And so moving on to the next factor that you
19 list of the likelihood of moving to a different vendor.
20 Again, this is back on page 32, sir.

21 A. Yes.

22 Q. You list likelihood of moving to a different vendor
23 as a factor weighed in considering whether to renew
24 maintenance agreements with vendors; correct?

25 A. Yes.

1 Q. And, again, there's evidence in this case that some
2 of the Rimini customers considered the likelihood of moving
3 to a different vendor and making the decision to leave
4 Oracle support; correct?

5 A. Yes.

6 Q. In this case, on footnote 42, you cite the AGCO
7 Corporation, Koch Business Solutions, Pitney Bowes and
8 SonicWall as Rimini clients that considered a move to a
9 different vendor in connection with their support
10 decisions; correct?

11 A. It's footnote 43, is it not?

12 Q. That's correct. Sorry if I --

13 A. Yes, I did.

14 Q. So the next factor you list is dissatisfaction with
15 the current vendor; correct?

16 A. Yes.

17 Q. And, again, you list dissatisfaction with the
18 quality of support from the vendor as a factor weighed in
19 considering whether to renew the maintenance agreement with
20 that vendor; correct?

21 A. Yes.

22 Q. And, again, there's evidence in this case that some
23 of the Rimini customers considered their dissatisfaction
24 with Oracle support in making the decision to leave Oracle;
25 correct?

1 A. Yes, that's correct.

2 Q. And, for example, you cite dissatisfaction with the
3 existing vendor is a factor that the City of Flint, County
4 of Kent, SonicWall and Wendy's considered in connection
5 with their support decisions.

6 A. Yes.

7 Q. Is that correct, sir?

8 A. Yes, yes.

9 Q. Okay. Now, the next factor you list is -- has to do
10 with sunseting; is that correct?

11 A. Yes, that's correct.

12 Q. And sunseting is a concern that the vendor may no
13 longer offer support for that client's release, the release
14 that they're running in production; correct?

15 A. Yes.

16 Q. And, in fact, there's evidence in this case that at
17 least some of the Rimini customers consider these sunset
18 concerns in making the decision to leave Oracle; correct?

19 A. Yeah, they considered it, yes, in light of the
20 representations, as I understood it, that were made to them
21 by Rimini that, in fact, this sunseting and stopping of
22 support was something that was a reality from Oracle when,
23 in fact, I believe that that turned out not to be true.

24 Q. Do you know one way or the other as you sit here
25 today?

1 A. Yes, I do know that Oracle will continue supporting
2 the older systems.

3 Q. Right. They have something called sustaining
4 support?

5 A. Yes, that's correct.

6 Q. And those aren't for -- those aren't the -- those
7 aren't updates for -- directed specifically to the older
8 products; correct?

9 A. I'm sorry. Could you repeat that?

10 Q. The sustaining support updates have to be
11 retrofitted to run with an older system, correct, sir?

12 A. I'd have to review the documentation to determine
13 that. I don't recall.

14 Q. Sustaining support also costs 10 percent more, so
15 they're paying more?

16 A. They are paying more. I don't -- I don't know
17 whether the 10 percent figure is correct.

18 Q. You cite Koch Business Solutions and Yum Brands as
19 Rimini clients that considered sunset concerns in making
20 their support decisions, sir?

21 A. Yes, I did.

22 Q. The last bullet point you have is the customization
23 issue. So this is whether or not to the extent that a
24 client's system is customized; correct?

25 A. Yes.

1 Q. And so, again, you list extensiveness of software
2 customization is a factor weighed in considering whether to
3 renew maintenance agreements with ERP vendors; correct?

4 A. Yes.

5 Q. And there's evidence in this case at least some of
6 the Rimini customers that you looked at considered the
7 software customizations in making their decisions to leave
8 Oracle; correct?

9 A. Yes.

10 Q. For example, you cite the Birdville Independent
11 School District as a Rimini client that considered the
12 extent of software customization in connection with their
13 support decision; correct?

14 A. Yes. Yes. This factor, again, and all the others
15 that you've listed, are in the context of an alternative
16 vendor being available.

17 Had one not been available, then these may well
18 have been factors that they would identify and consider and
19 weigh but that would not have resulted in any movement or
20 switch.

21 Q. Well, we know that historically 5 percent of
22 Oracle's customers leave every year regardless, before
23 Rimini and -- well, historically; correct?

24 A. Yes, that's correct. Roughly, yes.

25 Q. And we know from the discussion we've had that every

1 client has different considerations or factors that they
2 weigh in making their support decision; correct?

3 A. Again, within the context, the larger context of the
4 availability of an alternative and the price.

5 Q. Again, every client is different. Will you agree
6 with me on that, sir?

7 A. No. In fact, every client considers all of these
8 factors. Some may be more important this year than next
9 year, but they are universal factors.

10 So in that sense, no, they are not different.

11 Q. Different factors, different factors weigh more
12 heavily per client; correct?

13 A. At a particular point in time, but over the period
14 of the five or six years in this case, I think all of the
15 factors apply to all of the customers.

16 Q. And to understand why a particular client made a
17 support decision, you have to look at each client
18 individually and determine how each of these factors
19 weighed for those -- that client; correct?

20 A. Only, again, within the context of whether there was
21 an alternative that was available. With no alternative, to
22 some extent all of these factors are moot.

23 MR. RECKERS: No further questions. Thank you,
24 Your Honor.

25 THE COURT: Okay. Redirect examination?

1 MS. DUNN: Yes, Your Honor, thank you.

2 REDIRECT EXAMINATION

3 BY MS. DUNN:

4 Q. Mr. Yourdon, defense counsel asked you some
5 questions about the depositions that you reviewed in this
6 case. And you're aware Oracle deposed 17 customers; right?

7 A. Yes, I know.

8 Q. Okay. Are you also aware that the way this works is
9 that Rimini could have deposed any of the 400-some
10 customers they mentioned if they so chose to do that?

11 A. Not being a lawyer, I'm not familiar with the
12 protocol, but it certainly stands to reason.

13 Q. Okay. So in addition to the depositions that you
14 looked at, did you also look at written documents?

15 A. Yes, I did.

16 Q. Okay. And you looked at written documents for about
17 200 customers, is that somewhere in the ballpark?

18 A. Yes, that's approximately correct, yes.

19 Q. Okay. So, in your report you listed a number of
20 factors that customers might consider, but I want to not
21 obscure what I think is really at the heart of your
22 conclusion, which is also in your report. So I'd ask you
23 to turn to page 37 of your report.

24 A. Okay.

25 Q. Okay. And if you look at paragraph 67. You say,

1 "While all of the risks and rewards discussed
2 above may be relevant, the single largest factor in
3 determining whether a customer actually does shift its ERP
4 maintenance contract to a different support provider is the
5 promise of significant cost savings."

6 And then you say,

7 "But even the lure of a deep discount is
8 typically not enough to persuade customers to switch
9 providers without the credible belief that they will
10 receive something approaching vendor-level support."

11 Now, I'd like for you to take the time to
12 explain that to the jury because I want to make sure
13 there's no confusion about your opinion on this.

14 A. I agree with that, and that is what I wrote in this
15 paragraph of my report.

16 And that's what I was trying to convey a moment
17 ago, that there may be particular issues that they take
18 into consideration at any point in time such as
19 customization or any of the eight or nine on the list that
20 you saw.

21 But, at the end of the day, if they don't have
22 something approaching credible, reliable, vendor-level
23 support, then all of this is academic, all of it is moot.

24 You can be unhappy with all kinds of things in
25 your personal life, but if there's no alternative that's --

1 that you can depend on, then it's a somewhat academic
2 discussion, and that's what I was trying to convey.

3 Q. And it seems like also what you're saying is while
4 price is the single largest factor, without the appeal of
5 the promise of vendor-level support, they wouldn't go. So
6 you really need both.

7 A. You need both. In my experience, it's the price
8 that often captures the attention of somebody.

9 But then the next serious question, especially,
10 again, for enterprise customers with mission-critical
11 systems where you can't just casually shrug and make a
12 decision, where you have to think long and hard before you
13 make a commitment, this vendor-level support is absolutely
14 crucial.

15 Q. Counsel also asked you about a paragraph in your
16 report that talks about the period of time where Pitney
17 Bowes went on self-support, and I think it's important to
18 read the end of the sentence here.

19 So this is paragraph 133 of your report on page
20 71.

21 Defense counsel said to you that --

22 MR. RECKERS: Your Honor, Your Honor, I'm sorry.
23 I object to the report being put on the screen.

24 THE COURT: All right.

25 MS. DUNN: That is fine. We could do this

1 without that.

2 BY MS. DUNN:

3 Q. So defense counsel said to you Pitney's management
4 considered themselves lucky to be on self-support. Can you
5 read what that sentence actually says.

6 A. "Pitney's management considered themselves lucky,
7 which I put in quotes here, "to have survived without any
8 negative consequences."

9 Q. "Lucky to have survived"?

10 A. That was the language I used, those were the words.

11 Q. Okay. So while we're on this topic, let's look
12 at -- we heard testimony yesterday from Kevin Maddock who
13 also talked a little bit about self-support.

14 I'd like to put up on the screen for you his
15 testimony at page 1349.

16 Okay. So Mr. Maddock -- Mr. Isaacson says,

17 "Now self-support in your view is risky, it's
18 like driving a car without insurance or not having health
19 insurance."

20 And Mr. Maddock says, "That's correct, I do feel
21 that way."

22 And then later down he says:

23 "The reason is, this is really important
24 software to a business, to its HR, to its accounting, its
25 finances, and if there's a problem with it, you need to

1 have support available right away."

2 That's Mr. Isaacson.

3 And Mr. Maddock says -- he agrees with that. He
4 says, "Yes, I do."

5 And Mr. Isaacson says, "In fact, that's what you
6 tell customers; correct?"

7 And Mr. Maddock says, "That's right."

8 So is this testimony of Mr. Maddock, who is
9 the -- I believe head of sales of Rimini Street, do you
10 agree with this?

11 A. Yes, it's absolutely consistent with my experience
12 in the field.

13 Q. One last thing also from Mr. Maddock's testimony.

14 Defense counsel discussed with you this question
15 of availability of alternative support providers. And this
16 was addressed a little bit in Mr. Maddock's testimony
17 yesterday.

18 I'm looking at page 121 at 8.

19 MR. RECKERS: Objection, Your Honor, scope. I
20 did not ask about alternatives.

21 MS. DUNN: Your Honor, defense counsel put on
22 the screen a slide where the second factor was alternative
23 support providers.

24 MR. RECKERS: It is reliable alternatives, and
25 the only one I mentioned was self-support.

1 MS. DUNN: Your Honor, defense counsel quite
2 expressly asked Mr. Yourdon about the factors, one of which
3 was reliable alternatives, and this is specifically what
4 Mr. Maddock's testimony goes to.

5 THE COURT: That is within the scope as the
6 Court understood it, and the objection is overruled.

7 BY MS. DUNN:

8 Q. All right. So looking at line 8, this is a question
9 by Mr. Isaacson. He says to Mr. Maddock,

10 "In fact, your most frequent competitor in
11 support for Oracle software is Oracle."

12 And Mr. Maddock says, "That's correct."

13 And then Mr. Isaacson says,

14 "And since TomorrowNow closed and you joined
15 Rimini Street, your most frequent competitor is not
16 Spinnaker, it's not any other company for Oracle support,
17 it's Oracle."

18 And Mr. Maddock says, "That's correct."

19 Now, Mr. Yourdon, is that consistent with your
20 understanding?

21 A. Yes, it is consistent with my understanding of how
22 the entire industry works. We could have had the same
23 conversation about SAP or any other large enterprise
24 support company and software company, yes.

25 MS. DUNN: Thank you, Your Honor. I have no

1 further questions.

2 THE COURT: Recross-examination, Mr. Reckers?

3 MR. RECKERS: No further questions, Your Honor.

4 THE COURT: All right. Mr. Yourdon, that will
5 complete your testimony, and you may step down.

6 Ladies and gentlemen, this is probably a good
7 opportunity to take our first break.

8 I'll remind you of all the admonitions, and
9 we'll return in approximately 15 minutes, assuming that
10 everyone's ready to go with that, and you may go ahead and
11 step down.

12 (Recess from 9:51 a.m. until 10:07 a.m.)

13 (Outside the presence of the jury.)

14 THE COURT: All right. Have a seat, please.

15 The record will show we're in open court but
16 outside the presence of the jury. Let's see.

17 MR. STRAND: Your Honor, two very --

18 THE COURT: Just a moment, Mr. Strand.

19 I see I have in front of me a new stipulation
20 regarding exhibits, and I appreciate that counsel have
21 worked that out, and I am signing it at this time. This is
22 document 817.

23 MR. POLITO: Your Honor, thank you. That's the
24 stipulation regarding copyright registrations.

25 THE COURT: Right. Okay.

1 All right. Mr. Strand?

2 MR. STRAND: Two short items, Your Honor.

3 Over the break counsel and I discussed the
4 noninfringing alternative slide that was discussed first
5 during Mr. Yourdon's testimony.

6 There is a similar slide that will come up
7 during Ms. Dean's testimony. Counsel's got his words on
8 it. I'm fine with the slide.

9 But if we can proceed according to the same
10 ground rules that the Court set during the sidebar during
11 Mr. Yourdon's deposition, and subject to our same
12 objections, then we don't need to interrupt the witnesses'
13 testimony.

14 MR. ISAACSON: And to be clear in terms of
15 what's not on the slide, I would ask the leading question
16 "did you understand TomorrowNow to be an infringing
17 alternative," and I would ask the leading question "did you
18 understand CedarCrestone to be an infringing alternative,"
19 and that would be -- and the answers will be one-word
20 answers, and that will be the end of it --

21 THE COURT: All right.

22 MR. ISAACSON: -- assuming there's no
23 cross-examination on those points.

24 THE COURT: And I have no problem with that. Do
25 you, Mr. Strand?

1 MR. STRAND: No, no, and I can assure you there
2 will be no cross-examination on these points.

3 THE COURT: All right.

4 MR. STRAND: Second thing, your Honor, we had
5 anticipated that perhaps there would be a ruling on the
6 154B redaction issues this morning, but it's going on, and
7 I recognize it's a huge job for the Court to get through
8 all that.

9 There is one entry in 154B that I may use in
10 cross-examination, and with the Court's leave, what I would
11 like to do is hand that up now, and then if the Court
12 wouldn't mind, perhaps at the next break, taking a quick
13 look at that and see where we are --

14 THE COURT: All right.

15 MR. STRAND: -- on that.

16 It is a document that was received by and
17 considered by Ms. Dean in her analysis in this case, and we
18 want to see if we can get that one resolved.

19 THE COURT: All right. You're welcome to do
20 that. And I appreciate it.

21 MR. STRAND: And, Your Honor, we're trying to
22 get coordinated with counsel because it's a nasty document.

23 If you wouldn't mind, I'll hand it up to you.
24 And I can give you a second copy if you want. The actual
25 phraseology that I would raise is yellow highlighted there

1 in 154B.

2 THE COURT: Okay.

3 MR. STRAND: I don't think we need my more
4 argument on it. I think you've already heard this morning
5 what you want to hear.

6 THE COURT: I'll try and take a look at it as
7 I'm moving along, and hopefully in the next break we'll
8 address it.

9 I assume from your comments that it's not going
10 to surface before the next break.

11 MR. STRAND: And if it does, Your Honor, we'll
12 approach the bench.

13 THE COURT: All right. Let's bring in the jury,
14 please.

15 COURTROOM ADMINISTRATOR: Yes, Your Honor.

16 (Jurors enter courtroom at 10:13 a.m.)

17 THE COURT: All right. Please have a seat.

18 The record will show we're in open court. The
19 jury is all present. Counsel and parties are present.

20 May we have plaintiffs' next witness, please.

21 MR. POLITO: Thank you, Your Honor.

22 Next we'll play portions of the videotaped
23 deposition of Alecia Holmes.

24 Ms. Holmes began as a primary support engineer,
25 so she was a point of customer contact at Rimini Street,

1 and she moved on to be in a managerial role. She became
2 the manager for support for financials and supply chain
3 management for PeopleSoft at Rimini Street.

4 This is almost 11 minutes in length. And we
5 have one exhibit to admit, which is PTX 589, to which I
6 understand there's no objection.

7 THE COURT: Is there any objection?

8 MR. STRAND: No objection, Your Honor.

9 THE COURT: All right. It is admitted.
10 (Plaintiff's Exhibit 589 received into
11 evidence.)

12 THE COURT: You may go ahead, please,
13 Mr. Polito.

14 MR. POLITO: Thank you.

15 (Videotape deposition of Alecia Holmes played
16 as follows:)

17 PAGE 12:13 TO 13:09 (RUNNING
18 00:00:44.281)

19 "Q. I'm sorry, Ms. Holmes. Could you spell
20 your name for the record.

21 A. Sure. A-l-e-c-i-a, last name H-o-l-m-e-s.

22 Q. Thank you. Is your middle initial D?

23 A. Yes.

24 Q. I ask because you were at ADH
25 Consulting --

1 A. Yes.

2 Q. Which I guess is your initials.

3 A. Yes.

4 Q. Let's back up. Before that, you were at
5 PeopleSoft?

6 A. Yes.

7 Q. And approximately how long?

8 A. Few months short of five years.

9 Q. What did you do at PeopleSoft?

10 A. I was a PeopleSoft Principal Consultant.

11 Q. What does that mean?

12 A. Implement the PeopleSoft software and
13 supported after go live, if necessary.

14 PAGE 16:18 TO 16:23 (RUNNING 00:00:12.066)

15 Q. Had you had a computer science background
16 prior to that?

17 A. I worked with an ERP maintenance
18 manufacturing company prior to coming to work
19 for PeopleSoft. So I had experience
20 implementing software prior to PeopleSoft.

21 PAGE 17:09 TO 17:11 (RUNNING 00:00:04.930)

22 Q. Got it. Thank you. You left PeopleSoft
23 around March 2005?

24 A. Sounds about right.

25 PAGE 17:25 TO 18:03 (RUNNING 00:00:07.395)

1 Q. And what did you do next?

2 A. I became an independent consultant.

3 Q. Is that ADH Consulting?

4 A. Yes.

5 PAGE 18:08 TO 18:17 (RUNNING 00:00:36.350)

6 Q. What did you do as ADH Consulting?

7 A. I assisted -- the reason I went
8 independent, I went to work as an independent
9 consultant with Regions Bank out of Memphis.
10 And it was formerly -- I can't remember --
11 Planters Bank. I can't remember the whole
12 name of it. And they had been merged
13 recently with Regions, and they were in need
14 of someone to come in and help them merge the
15 data for Regions.

16 PAGE 36:22 TO 37:07 (RUNNING 00:00:27.016)

17 Q. Thank you. Let's go back to your
18 employment at Rimini Street. When you first
19 started at Rimini Street, what was your
20 title, if you can recall?

21 A. Primary Support Engineer.

22 Q. Is that PSE?

23 A. Yes.

24 Q. What were your duties as a Primary Support
25 Engineer?

1 A. To support the Financials and Supply Chain
2 clients for the PeopleSoft product.

3 PAGE 89:25 TO 90:03 (RUNNING 00:00:19.021)

4 Q. (By Mr. Polito) Ms. Holmes, can you
5 identify Exhibit 1438 for the record?

6 A. It appears to be an instant message
7 conversation between myself and Susan
8 Tahtaras.

9 PAGE 90:10 TO 91:19 (RUNNING 00:01:27.112)

10 Q. Starting at the third line of the
11 conversation, Ms. Tahtaras says she was
12 looking at that Birdville issue again.
13 There's some discussion of an issue. Do you
14 see that?

15 A. I do.

16 Q. She asks were you able to find anything in
17 Customer Connection, and you say,
18 essentially, not yet, but you did search for
19 a few things; is that right?

20 A. It appears. I don't remember doing
21 research.

22 Q. But that's what you said?

23 A. Yes.

24 Q. And you have no reason to think that you
25 would type something that wasn't true?

1 A. No.

2 Q. And you say, but I'm really busy,
3 paraphrasing, and Ms. Tahtaras offers to
4 search Customer Connection. Do you see that?

5 A. Yes.

6 Q. She asks for your login, and you reply
7 since Birdville is still on PeopleSoft
8 support, I guess we can use my personal login
9 until we get theirs. Then, you provide the
10 following login, aholmes_ENSCO, with password
11 ensco2007?

12 A. Yes.

13 Q. Was that a Customer Connections login
14 credentials granted to you by ENSCO
15 International, as far as you recall?

16 A. I can't remember, but it looked like I
17 typed it. So, most likely, it was at that
18 time.

19 Q. And did you on January 3rd, 2007 provide
20 those ENSCO credentials to Ms. Tahtaras for
21 use on behalf of customer Birdville?

22 PAGE 91:21 TO 91:23 (RUNNING 00:00:12.106)

23 A. It appears that I provided them to Susan
24 based upon the fact that Birdville was
25 licensed to the same information.

1 PAGE 92:13 TO 92:14 (RUNNING 00:00:03.520)

2 Q. Are you a lawyer, Ms. Holmes?

3 A. No, I'm not.

4 PAGE 92:15 TO 93:19 (RUNNING 00:01:31.273)

5 Q. So, in your response saying that if you
6 were licensed for even one module you could
7 review information for any module, is that
8 the answer of someone using Customer
9 Connection rather than --

10 A. That's my -- yes, that's my experience as
11 being an employee at PeopleSoft, a consultant
12 at PeopleSoft, and having access to Customer
13 Connection for previous clients that you
14 couldn't look at, you know, multiple
15 releases. That's my experience. I can't say
16 that for sure, but that was my understanding
17 at that point.

18 Q. So, earlier, when you testified it appears
19 that I provided them to Susan based upon fact
20 that Birdville was licensed to the same
21 information as ENSCO, did you, in fact, mean
22 that you provided your ENSCO credentials to
23 Susan because she would be able to search the
24 same information that you believed that
25 Birdville would be able to search?

1 A. I did not believe that logging under those
2 credentials that Birdville would gain any --
3 looks like they would not gain any additional
4 information that they would have had by using
5 their own credentials. That was my
6 experience with Customer Connection at that
7 time, that there was no difference. I can't
8 say that that's the way it was structured.
9 That was my understanding.

10 PAGE 93:20 TO 93:25 (RUNNING 00:00:23.824)

11 Q. Regardless of your understanding of the
12 way that Customer Connection worked, did you
13 believe that it was appropriate to use
14 customer credentials, ENSCO's credentials,
15 for Customer Connection to support Birdville
16 on January 3rd, 2007?

17 PAGE 94:02 TO 94:13 (RUNNING 00:00:38.794)

18 A. Once again, I'm not a lawyer, and I'm not
19 aware of what was prohibited by using that.
20 Like I said, I clearly state here, since they
21 are still on PeopleSoft support and my
22 understanding was that the same information
23 would be available to both clients, that I
24 was not giving any benefit to Birdville by
25 using a credentials while we were waiting on

1 the Birdville credentials.

2 Q. Based on your experience using one
3 customer's credentials for that customer's
4 own support prior to working at Rimini
5 Street?

6 PAGE 94:15 TO 94:17 (RUNNING 00:00:02.735)

7 Q. (By Mr. Polito) Let me ask that
8 differently.

9 A. Yes.

10 PAGE 94:18 TO 94:22 (RUNNING 00:00:06.732)

11 Q. Had you previously used one customer's
12 credentials to support a different
13 customer --

14 A. No.

15 Q. -- prior to being at Rimini Street?

16 A. No.

17 PAGE 94:23 TO 96:01 (RUNNING 00:01:28.562)

18 Q. So your prior understanding of Customer
19 Connection was based on using Customer A's
20 credentials to support Customer A?

21 A. Right, and also at PeopleSoft, as a
22 PeopleSoft consultant, I had PeopleSoft
23 credentials to Customer Connection. I had
24 also worked with -- had seen, had had access
25 and experience, exposure, to Customer

1 Connections for five years and seen
2 multiple -- and I knew how the searches
3 worked. And I had clients -- because
4 especially doing upgrades, they could look
5 back. They would have a selection of early
6 releases to early releases even if they were
7 on a most current release. So that's where I
8 got my understanding that there was no -- it
9 was not restricted.

10 Q. On January 3rd, 2007, did you have an
11 opinion about whether it was permissible to
12 use credentials for ENSCO to Customer
13 Connection to support Birdville?

14 A. Once again, I'm not a lawyer, so I can't
15 say whether or not it was legally -- like I
16 said, I base this just upon the fact that
17 they were both licensed. You know, they were
18 both still paying Oracle for support. They
19 both had valid credentials for Customer
20 Connection. And I didn't think I was giving
21 Birdville any benefit by using ENSCO's
22 credentials.

23 PAGE 96:04 TO 96:08 (RUNNING 00:00:16.650)

24 Q. (By Mr. Polito) Ms. Holmes, did you have
25 an opinion on January 3rd, 2007 about whether

1 it was permissible to use ENSCO's credentials
2 to Customer Connection to support Birdville?

3 PAGE 96:10 TO 96:17 (RUNNING 00:00:36.325)

4 A. Once again, I mean, you know, I guess I
5 didn't have -- I don't have a firm opinion
6 one way or the other. Like I said, that was
7 just based upon my experience. Like I said,
8 I guess we can use this. I can't even say
9 whether this was even used, but, you know,
10 like I said, I -- that's the best answer I
11 can give you.

12 PAGE 96:18 TO 96:23 (RUNNING 00:00:10.546)

13 Q. Did you tell ENSCO International that you
14 were giving their credentials to other Rimini
15 Street employees, as best you can recall?

16 A. I do not remember having that
17 conversation, no.

18 PAGE 96:24 TO 97:09 (RUNNING 00:00:31.316)

19 Q. Is it likely that you would have told
20 them?

21 A. It's possible, but I can't -- I do not
22 remember having that conversation.

23 Q. Do you think it's more likely that you
24 didn't tell them?

25 A. Like I said, I don't remember having the

1 conversation. If we were talking about
2 something, I may have brought it up, but I do
3 not remember expressly calling them and
4 asking them if it was okay.

5 PAGE 120:04 TO 120:22 (RUNNING 00:00:43.179)

6 Q. When you were an independent consultant at
7 ADH Consulting, would you have copies of
8 PeopleSoft software on a nonclient machine?

9 A. No, I did not.

10 Q. How would you access the software,
11 generally speaking?

12 A. From the client's environment.

13 Q. Generally, you were on site?

14 A. Yes.

15 Q. And you would log in as the client would?

16 A. Right. They granted me credentials to
17 their system, and I would --

18 Q. And that was consistent per your practice
19 as an independent consultant, so far as you
20 recall?

21 A. Right. You're not going to get into a
22 client's system without them granting you."

23 (End of deposition)

24 THE COURT: Plaintiffs' next witness?

25 MR. POLITO: Thank you, Your Honor. We've done

1 JDE, we've done PeopleSoft, now we're going to have a
2 Siebel.

3 This is the deposition of John Whittenbarger who
4 was originally a primary support engineer for Siebel, and
5 became the manager, and was also -- had some involvement
6 with downloading.

7 This is 15 minutes, 49 seconds, and there are a
8 number of exhibits.

9 The previously admitted exhibits are PTX 6, 9,
10 42, 223, and 310.

11 And then we'd move for admission of PTX 221,
12 306, and 314.

13 THE COURT: All right. So at the time of the
14 deposition, he was an employee of --

15 MR. POLITO: Rimini Street.

16 THE COURT: All right. Thank you.

17 MR. RECKERS: Your Honor, no objection. He was
18 a former employee at the time of his deposition.

19 THE COURT: All right.

20 COURTROOM ADMINISTRATOR: Is there an objection
21 to the admission of the other exhibits?

22 MR. RECKERS: No, ma'am.

23 THE COURT: All right. Those will be admitted.
24 And it is understood that he was a former employee at the
25 time of the deposition.

1 (Plaintiffs' Exhibits 221, 306 and 314
2 received into evidence.)

3 MR. POLITO: And, Your Honor, I should then
4 clarify that Ms. Holmes was also a former employee at the
5 time of her deposition.

6 THE COURT: All right. Thank you.

7 MR. POLITO: Thank you.

8 (Videotape deposition of John Whittenbarger
9 played as follows:)

10 PAGE 6:24 TO 7:03 (RUNNING 00:00:13.362)

11 "Q. When did you work for Rimini Street?

12 A. I believe June 2006 for about 2-1/2 years.

13 Q. Until roughly the end of '08?

14 A. Yeah, that's about right.

15 PAGE 9:01 TO 9:17 (RUNNING 00:01:05.541)

16 Q. In your time at Rimini Street, what --
17 what functions did you fill, what were your
18 roles?

19 A. I mean I was hired as a -- as a -- they
20 call it a primary support engineer. So I
21 mean that was -- it was a very small -- I
22 think I was the number six employee at that
23 time. So we kind of helped out wherever we
24 could or wherever was needed. But I
25 primarily stayed within the Siebel space, you

1 know, anywhere from -- you know the
2 onboarding -- I'm sure you've heard that
3 term -- and the support of clients and you
4 know, just helping with business process
5 refinements and that sort of thing around the
6 Siebel support.

7 Q. And to whom did you report when you were
8 at Rimini Street?

9 A. Initially Dennis Chiu and then later Brian
10 Slepko.

11 PAGE 10:10 TO 10:18 (RUNNING 00:00:20.064)

12 Q. You mentioned onboarding. What does that
13 mean?

14 A. That's transitioning a client, a new
15 client from vendor support to Rimini Street
16 support.

17 Q. And typically that was a transition from
18 support provided by Oracle to support
19 provided by Rimini Street, is that right?

20 A. Typically, yeah.

21 PAGE 10:25 TO 11:15 (RUNNING 00:00:55.749)

22 Q. Can you just generally describe the nature
23 of the services that Rimini Street provided
24 in your time there for Siebel customers?

25 A. I mean it was primarily, you know, kind of

1 the third tier support for serious problems
2 that they might have. So it wasn't -- it
3 wasn't a help desk or anything like that. We
4 kind of supported their -- you know, when
5 their -- when their internal support people
6 could not resolve an issue, they would call
7 us. And we also did help with upgrades on
8 occasion and small projects, you know, that
9 involved enhancements.

10 Q. That is someone wants some new
11 functionality and they're struggling and so
12 you help them figure out how to implement it?

13 A. Yeah, yeah.

14 PAGE 11:16 TO 11:22 (RUNNING 00:00:14.420)

15 Q. Was one of the services that Rimini Street
16 provided to prepare what was described as a
17 SupportWeb extract for some customers?

18 A. Yeah.

19 Q. And did you have a role in the provision
20 of that service?

21 A. Yeah, initially.

22 PAGE 12:13 TO 13:02 (RUNNING 00:00:33.685)

23 Q. So Oracle or Siebel had provided a website
24 known as Siebel SupportWeb, is that right?

25 A. Yeah.

1 Q. And it had -- what kind of information was
2 in it?

3 A. Troubleshooting, text, you know,
4 bulletins, alerts, service requests, that
5 sort of thing.

6 Q. And a SupportWeb extract downloaded a copy
7 of that information and then you put it on a
8 DVD and provided it to customers, is that
9 right?

10 A. Yeah.

11 Q. And SupportWeb was a password protected
12 website, is that right?

13 A. Yeah.

14 PAGE 16:02 TO 16:17 (RUNNING 00:00:34.089)

15 Q. Every customer that transitioned from
16 Oracle received a SupportWeb extract, is that
17 right?

18 A. Only if they had a valid login that was
19 still -- or valid support at the time of the
20 transition. There were a couple that were no
21 longer on Oracle support, so they wouldn't
22 get anything like this.

23 Q. I understand. So any customer that
24 still -- their maintenance end date hadn't
25 occurred yet by the time they signed up with

1 Rimini Street would get a SupportWeb extract,
2 is that right?

3 A. Right.

4 Q. I should say, just to be clear, that's for
5 Siebel customers we're talking about, right?

6 A. Right.

7 PAGE 17:10 TO 17:13 (RUNNING 00:00:07.627)

8 Q. So you used an application called Offline
9 Explorer for this purpose to create the
10 download from the Siebel SupportWeb, right?

11 A. Uh-huh.

12 PAGE 45:02 TO 45:04 (RUNNING 00:00:02.498)

13 Q. Let me offer you Exhibit 240.

14 (Document marked previously as
15 Exhibit 240 was presented.)

16 PAGE 45:14 TO 46:12 (RUNNING 00:01:03.575)

17 Q. "OE is scheduled to run nightly. I have
18 noticed it stops running the job on occasion
19 so I have to reset it from time to time. I
20 try to check it every other week. If it has
21 stopped running for more than a few days, I
22 have to modify the URL macro in the project
23 so it dates back far enough to capture the
24 missing data, run the one-off correction and
25 reset daily run. The other maintenance as

1 part of my bi-weekly checkup is to confirm
2 the login and password are valid so it can
3 authenticate automatically."

4 You were describing the process in place in
5 December '06 for your maintenance of Offline
6 Explorer, is that right?

7 A. Yes.

8 Q. And you were telling Mr. Slarve that one
9 of the things you did every two weeks or so
10 was to look to see if the login and password
11 are valid, is that right?

12 A. It seems so, yeah.

13 Q. And if the login and password had expired,
14 then the solution would be to put in a new
15 client's login and password, right?

16 A. Yes.

17 PAGE 59:13 TO 60:02 (RUNNING 00:00:49.321)

18 Q. Were there any customers for whom you
19 didn't have a local environment to
20 troubleshoot with for Siebel?

21 A. I'm sure there were and we would remote
22 into their system.

23 Q. And how did remote access as a tool
24 compare to having a local VM, make it easier
25 or harder?

1 A. It depends on the issue. I mean typically
2 it would make it -- it would make it easier,
3 a little more freedom to do what you needed
4 to do. But then again, you don't -- you
5 don't have a full copy of their data, so
6 oftentimes it's better to have -- to have
7 that client data in there.

8 PAGE 60:07 TO 60:12 (RUNNING 00:00:12.487)

9 Q. So if -- for those customers where you had
10 a local environment and VPN access, would you
11 agree that's the optimal setup that gave you
12 the most tools to troubleshoot their problems
13 effectively?

14 A. Yes.

15 PAGE 60:15 TO 60:23 (RUNNING 00:00:22.963)

16 The process of setting up these environments
17 involved installing a lot of different
18 software, right?

19 A. Uh-huh.

20 Q. And is it a time consuming process?

21 A. Yeah. I mean, it takes half a day.

22 Q. You have to install OS and a database and
23 the applications, configure it?

24 A. Right.

25 PAGE 60:24 TO 62:01 (RUNNING 00:01:03.472)

1 Q. And where did you get the software to use
2 to install those applications?

3 A. I think there was a common share with the
4 software.

5 Q. Is that called the software library, is
6 that how it was referred to?

7 A. Something like that.

8 Q. And do you know where that -- and what's
9 your recollection of how that was organized?

10 A. It was mainly by version, I believe.

11 Q. So you have a folder with Siebel and you
12 have different Siebel versions in it and the
13 install files for each?

14 A. Something like that, yeah.

15 Q. Do you know where that software came from?

16 A. You know, I think a lot of it came from --
17 I can't remember what Oracle calls it. They
18 have a website where you can download
19 software.

20 Q. EDelivery?

21 A. Yeah.

22 Q. So a lot of it was downloaded from
23 eDelivery, is that right?

24 A. Uh-huh.

25 Q. And there's some patches and other items

1 that are not available on eDelivery, is that
2 correct?

3 A. Yeah.

4 PAGE 62:02 TO 62:03 (RUNNING 00:00:05.510)

5 Q. Where do those come from?

6 A. The client would provide.

7 PAGE 64:08 TO 64:14 (RUNNING 00:00:22.744)

8 Q. Do you recall whether there were any
9 Siebel environments at Rimini Street that
10 were not created for a particular customer
11 but were created for Rimini Street's internal
12 use?

13 A. I mean I'm sure we had an environment to
14 evaluate the latest version and to learn --
15 you know, learn about it.

16 PAGE 68:07 TO 68:09 (RUNNING 00:00:03.057)

17 Let me offer you Exhibit 238.

18 (Document marked previously as
19 Exhibit 238 was presented.)

20 PAGE 69:08 TO 69:12 (RUNNING 00:00:19.337)

21 Q. And was this intended to show the
22 categories of information on the PeopleSoft
23 Customer Connection website and your progress
24 so far in downloading it using Offline
25 Explorer?

1 A. It seems -- seems to be, yes.

2 PAGE 69:16 TO 69:18 (RUNNING 00:00:06.270)

3 Q. Let me offer you Exhibit 224.

4 (Document marked previously as
5 Exhibit 244 was presented.)

6 PAGE 70:01 TO 70:10 (RUNNING 00:00:29.373)

7 Q. Now, Mr. Slarve says, "Attached is a
8 spreadsheet that has all the Siebel
9 application media that is available on the
10 Oracle eDelivery website. We currently don't
11 have the capacity to store it but will soon.
12 Just the ENU versions make up 3 terabytes.
13 Once we have the infrastructure in place
14 we'll pull it all down so that we have a full
15 local library."

16 Is this the library that you referenced
17 earlier of data from the eDelivery website?

18 PAGE 70:13 TO 70:19 (RUNNING 00:00:18.297)

19 THE WITNESS: I think so, yes.

20 BY MR. RINGGENBERG:

21 Q. And you used the data that was downloaded
22 from eDelivery to create the local
23 environments that you used to help support
24 customers, is that right?

25 A. Yes, uh-huh.

1 PAGE 70:20 TO 70:22 (RUNNING 00:00:04.072)

2 Q. Let me offer you Exhibit 246.

3 (Document marked previously as

4 Exhibit 246 was presented.)

5 PAGE 71:03 TO 72:02 (RUNNING 00:01:34.723)

6 Q. Now, turning to the second page of the
7 document, there's an email, appears to be
8 from you to Mr. Chiu, October 5th. It says,
9 "Dennis, Offline Explorer is now set up to
10 download contents of the Oracle eDelivery
11 website on a weekly basis while preserving
12 all versions of the key files."

13 Did you set up Offline Explorer to do that?

14 A. I believe so, yes.

15 Q. And he replies, "Thanks much for adding
16 this to the library, John." And you reply,
17 "No problem, Dennis. The OE software makes
18 it easy."

19 Where was this information stored, do you
20 recall?

21 A. It was a share.

22 Q. A network share?

23 A. Yes.

24 Q. And on eDelivery there's available
25 PeopleSoft software, Oracle Database

1 software, Siebel software, JD software,
2 correct?

3 A. Uh-huh, yes.

4 Q. And Rimini Street in your time there used
5 all of those -- all of that software in
6 connection with its work for customers,
7 right?

8 A. Uh-huh, yes.

9 PAGE 79:06 TO 79:08 (RUNNING 00:00:03.710)

10 Q. Let me offer you Exhibit 450.

11 (Document marked as Exhibit 450
12 for identification.)

13 PAGE 80:02 TO 80:17 (RUNNING 00:00:33.266)

14 Q. And he asks you, "How will you
15 troubleshoot an issue at your end when we
16 create ticket? Typically Siebel will set up
17 one instance of our version and reproduce the
18 issue with our DBF file at their end. Will
19 you follow the same steps or will you have a
20 different approach?"

21 And you reply, "We will also set up an
22 instance of your Siebel release SRF and DBF.
23 We use VMware internally so we can easily set
24 up environments to troubleshoot issues."
25 And that's a reference to what you described

1 before, which is you set up a local
2 environment to try to replicate what the
3 customer has so you can recreate their
4 problems, is that right?

5 A. Yes.

6 PAGE 80:18 TO 80:20 (RUNNING 00:00:05.899)

7 Q. And you understood that from XO's point of
8 view, the ability to do was an important part
9 of your service offering?

10 PAGE 80:23 TO 80:23 (RUNNING 00:00:01.333)

11 THE WITNESS: Yeah, I think so.

12 PAGE 85:12 TO 85:14 (RUNNING 00:00:03.440)

13 Q. Let me offer you Exhibit 454.

14 (Document marked as Exhibit 454
15 for identification.)

16 PAGE 86:04 TO 86:22 (RUNNING 00:01:02.110)

17 Q. And the ticket description in there says,
18 "In the midst of onboarding archive for XO,
19 the IP address for the download machines were
20 blocked this morning from Metalink3. While we
21 can still get to other pages like
22 metalink.oracle.com, we can't get in from IP
23 71.5.6.20."

24 An email from Mr. Chiu and you write,
25 "Thanks, Dennis. It seems they're onto us

1 for massive download volumes." What did you
2 mean by that?

3 A. Probably that Oracle noticed large
4 downloads from their website.

5 Q. And you were inferring that they
6 blocked -- that Oracle blocked that IP
7 address in response to the massive download
8 volumes?

9 A. Probably, yes.

10 Q. Did you later learn that Oracle, you know,
11 told Rimini Street that very directly?

12 A. Yes, I was aware of that.

13 PAGE 95:07 TO 95:09 (RUNNING 00:00:03.949)

14 Q. Let me offer you Exhibit 457.

15 (Document marked as Exhibit 457
16 for identification.)

17 PAGE 96:13 TO 97:05 (RUNNING 00:01:03.024)

18 Q. So if you go one email up the chain, this
19 appears you're forwarding this to Dan Slarve
20 and Bola Ola and you write, "FYI, below is a
21 new Siebel alert which I noticed this morning
22 and was published on SupportWeb five days
23 ago."

24 How did you -- is it correct that you learned
25 about this information that Siebel or Oracle

1 had distributed on SupportWeb?

2 A. I believe that would be correct.

3 Q. And you had noted that MedPro was no
4 longer on Siebel support, so that would mean
5 they would no longer have access to
6 SupportWeb, is that right?

7 A. That's correct.

8 Q. Does that mean you must have been using
9 someone else -- a different customer's login
10 on SupportWeb at that time?

11 A. Probably.

12 PAGE 97:06 TO 97:13 (RUNNING 00:00:41.436)

13 Q. And did you ultimately provide this
14 information to MedPro in an altered -- in a
15 non-verbatim way?

16 A. I don't know if I ended up communicating
17 it, but it seems like I executed what the
18 alert was referring to accidentally.

19 Q. And --

20 A. Or without knowing that it was an alert.

21 PAGE 98:17 TO 98:21 (RUNNING 00:00:07.724)

22 Q. So Mr. Chiu is telling you, hey, go on
23 SupportWeb and try to figure out what these
24 do so that we know for other clients that may
25 come in the door, right?

1 A. Yes.

2 PAGE 98:22 TO 99:11 (RUNNING 00:00:53.398)

3 Q. Was it the case that from time to time
4 individuals at Rimini Street would make use
5 of access to SupportWeb or later MyOracle
6 Support to look for knowledge documents that
7 helped them perform services for clients
8 other than the clients who had provided the
9 login?

10 A. I don't know. Typically we would try to
11 use the extract for that client.

12 Q. But in this case, it was the new
13 information, right, that only had come out?

14 A. Right, yeah. That's correct.

15 Q. So that wouldn't be contained in the
16 customer's extract because it was newly
17 provided information in MyOracle, right?

18 A. Right.

19 (End of deposition.)

20 THE COURT: All right. Plaintiffs' next
21 witness.

22 MR. ISAACSON: Yes, Your Honor. Plaintiffs call
23 Elizabeth Dean.

24 COURTROOM ADMINISTRATOR: Please raise your
25 right hand.

1 You do solemnly swear that the testimony you
2 shall give in the cause now before the Court shall be the
3 truth, the whole truth, and nothing but the truth, so help
4 you God?

5 THE WITNESS: Yes, I do.

6 COURTROOM ADMINISTRATOR: Please be seated.

7 Would you please state your name and spell your
8 name for the record.

9 THE WITNESS: Elizabeth Dean; D-e-a-n.

10 COURTROOM ADMINISTRATOR: Please tell us your
11 city and state of residence.

12 THE WITNESS: Alameda, California.

13 MR. ISAACSON: All right. Your Honor, I should
14 have said this before making Ms. Dean walk up here.

15 There's several exhibits that would be referred
16 to in slides in her testimony that the other side -- that
17 defense counsel is aware of and does not have any objection
18 to.

19 So I'd just like to read into the record that I
20 would move to admit PTX 1960, PTX 789, PTX 775, PTX 3503,
21 PTX 3512, and then DTX 1947.

22 MR. STRAND: We have no objections to those
23 documents, Your Honor.

24 THE COURT: They are admitted.

25

1 (Plaintiffs' Exhibits 775, 789, 1960, 3503
2 and 3512 received into evidence.)
3 (Defendants' Exhibit 1947 received into
4 evidence.)

5 MR. ISAACSON: Sorry to start off on such a dull
6 note.

7 THE COURT: Go ahead, please, Mr. Isaacson.

8 MR. ISAACSON: All right.

9 ELIZABETH DEAN

10 called as a witness on behalf of the
11 Plaintiffs, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. ISAACSON:

14 Q. Good morning, Ms. Dean. Could you introduce
15 yourself to the jury.

16 A. So my name is Elizabeth Dean, and I'm a
17 vice-president at TM Financial Forensics.

18 Q. All right. And what do you do for a living? You
19 mentioned TM Financial Forensics.

20 A. I'm a certified public accountant, and I do a
21 specialty type of accounting, which is financial forensics.
22 Essentially we do investigations of accounting and
23 financial issues.

24 Q. And you said TM Financial Forensics. What is that
25 business?

1 A. We're a financial and business consulting firm. We
2 have people that are MBAs, CPAs, and we're hired by clients
3 to review accounting documents for them or in litigations
4 like this for both parties.

5 Q. And what's your position with TM Financial
6 Forensics?

7 A. I'm a vice-president, and I cofounded the firm.

8 Q. What are your responsibilities as a vice-president
9 since you founded the firm or helped found the firm?

10 A. It's a small firm. We have about 60 employees. So
11 I have a lot of management responsibilities, but I spend
12 most of my time doing consulting and working with clients
13 on these kinds of engagements.

14 Q. And then the field that you work in, as I understand
15 it, is the field of analyzing potential damages?

16 A. That's correct.

17 Q. How long have you been working in the field of
18 analyzing damages?

19 A. I've worked on cases like these for about 25 years.

20 Q. And in those 25 years, have you calculated damages
21 in cases involving copyright infringement claims or
22 interference claims?

23 A. I have.

24 Q. Okay. What other areas have you estimated damages
25 in?

1 A. Well, a large part of my work is breach of contract.
2 I also deal with a lot of interpretations of financial
3 provisions and accounting codes.

4 And then I also do a lot of intellectual
5 property work beyond copyrights, patents, trademarks, trade
6 secrets, those all come up in disputes quite a bit.

7 Q. All right. How many intellectual property related
8 cases have you worked on over your career relating, again,
9 to the issue of damages?

10 A. I would estimate about a hundred.

11 Q. Okay. Now, you said copyrights or one type of
12 intellectual property that you've dealt with?

13 A. That's right.

14 Q. Okay. How many intellectual property cases
15 involving copyrights have you worked on, again, relating to
16 the issue of damages?

17 A. About a dozen.

18 Q. And have you testified as an expert witness on
19 damages at trials before like -- such as this?

20 A. I have.

21 Q. About how many times?

22 A. About half a dozen times that's actually gone all
23 the way to trial.

24 Q. All right. Tell the jury your educational
25 background.

1 A. I have a bachelor in math and economics with a minor
2 in accounting. That's from Claremont McKenna College which
3 is in Southern California.

4 And then I also attended a program on technology
5 transfer and licensing at the University of California at
6 Berkeley.

7 Q. All right. Now, returning to your field of damages,
8 what teaching have you done in that area?

9 A. Well, often accountants and attorneys want to learn
10 more about this area, and they invite me to speak at
11 seminars, conferences, law schools.

12 For the last few years I've gone in and done
13 one-day seminars at Stanford or Santa Clara Law School or
14 UC Hastings.

15 I also serve on USC's planning committee. They
16 put on a one-day conference covering all aspects of
17 intellectual property law, including damages.

18 Q. All right. And what professional licenses or
19 certificates do you have?

20 A. For accounting there's a lot of choices, so I
21 actually have three right now. I'm a certified public
22 accountant. I'm also a certified management accountant.
23 And I'm certified in financial forensics, which is the area
24 most similarly aligned to what we're going to talk about
25 today.

1 And then people that work with intellectual
2 property often get valuation licenses, so I also have a
3 licensing professional certification.

4 Q. All right. And what professional standards apply in
5 your field?

6 A. Well, I consider myself an accountant, and so I
7 prescribe to the rules of the American Institute of
8 Certified Public Accountants. They promulgate a lot of
9 rules with respect to professional care and due diligence,
10 and, of course, I abide by those.

11 And then we also have practice aids and study
12 guides with respect to calculating damages in this type of
13 case and performing an appropriate investigation.

14 Q. And did you follow those standards in this case?

15 A. Yes, I did.

16 Q. All right. Now, when were you first retained by
17 counsel for Oracle?

18 A. In July of 2011.

19 Q. All right. And with respect to your firm, TM
20 Financial Forensics, have you worked with anyone else on
21 this matter at that firm?

22 A. Yes. Over the years there have been a number of
23 different people that have been involved in this
24 engagement.

25 Q. All right. In terms of the people who have also

1 worked on this assignment, can you describe the main people
2 and their background?

3 A. So, two of the people that have worked most closely
4 with me, another vice-president of our firm, Julie Knox,
5 she has a masters in finance and accounting. She also has
6 a lot of accounting designations, all the same ones I have.
7 She's also a chartered financial analyst.

8 And then Karen Martinsen, she has worked out
9 extensively with respect to all the data that we're going
10 to talk about today. We had to do quite a bit of SQL
11 programming in order to analyze all the data. She
12 primarily took charge of that role. And she has an MBA
13 from Kellogg.

14 MR. ISAACSON: I tried to go the whole trial
15 without saying SQL programming, but --

16 Oh, at this point I would ask that Ms. Dean be
17 allowed to proceed as an expert in the field of estimating
18 damages.

19 THE COURT: She may.

20 BY MR. ISAACSON:

21 Q. All right. Now, since July 2011, how many hours
22 have you personally spent on this matter?

23 A. I have spent hundreds of hours on this matter.

24 Q. All right. Now, you've prepared some slides for --
25 in order to explain your work to the jury. Let's start

1 looking at those.

2 Let's look at slide one, your work steps.

3 Now, before you get to your actual calculations,
4 will you explain to the jury what you did to reach your
5 opinions in this case.

6 A. Yes, I can. This investigation on this case was
7 very similar to what I do on all my cases.

8 First, I have to understand what the allegations
9 are in the case. That informs me about the kind of
10 information that I need to review. Of course, I'm mostly
11 focused on the financial information.

12 And then I perform analyses with the information
13 that I've been provided, and ultimately I make a
14 determination as to whether or not there's been damages.

15 Q. Okay. Well, let's talk about that first step, the
16 information you reviewed. Let's go to the next slide.

17 Would you explain to the jury what information
18 you reviewed in this case.

19 A. Yes. Based on what I was informed the allegations
20 in the case were, I was available -- it was made available
21 to me to look at Rimini's contracts which was very
22 important to determine the scope of the services that were
23 offered, the products that were covered by their support
24 contracts.

25 In corollary to that, I also received Oracle's

1 contract information, although, for the most part, I
2 reviewed the data on that because it was so extensive.

3 Then both companies had thousands of financial
4 and management documents that were produced that I was able
5 to look at to get more insight into their financial
6 operations.

7 You have seen many of these, but there were over
8 a hundred depositions taken in the case, and all of those
9 were made available to me.

10 I also looked at expert reports and deposition
11 testimony from other experts in the case such as
12 Mr. Yourdon that just testified.

13 Legal filings.

14 And then at times I did independent company and
15 industry research.

16 And then there were Oracle personnel that I
17 needed to speak with to understand, for example, some of
18 the data that I was provided, and those were interviews
19 that I took separate from the depositions.

20 Q. All right. So then -- once you've reviewed that
21 information, let's go to step two, analysis.

22 Would you explain to the jury what you -- how
23 you went about analyzing the information.

24 A. So the analysis is directly related to the
25 allegations of wrongdoing. So first I had to really

1 understand what the business models were and how those were
2 impacted by the items that are claimed to be improper.

3 That really had to do with support service, so I
4 had to collect what everything Rimini had on their support
5 service offerings and which clients they had serviced.

6 I worked with Oracle's database to find out what
7 those customers had been getting service for on the Oracle
8 side when they had been Oracle customers to determine the
9 lost support revenues.

10 Then on the database -- so that was all on the
11 application products. And then on the database products I
12 had to do a separate evaluation and analysis of what Oracle
13 had for licensing terms and policies.

14 And, finally, I looked at both companies'
15 financial results overall.

16 Q. All right. So let's -- the first item there you
17 said was allegations of wrongdoing. Let's look at slide 4,
18 Summary of Alleged Misconduct.

19 What's your understanding of what Oracle's
20 alleging Rimini did wrong?

21 A. So what guided my work were three major areas. The
22 first was the copyright infringement, PeopleSoft, JDE, and
23 Siebel software and support materials and then separately
24 the Oracle Database software.

25 Second, the claims of interference that

1 essentially were allegations of wrongdoing with respect to
2 misrepresentations to the customers, and then using
3 improper means to access the support websites.

4 Q. All right. So -- I'm sorry, go ahead.

5 A. And last was computer fraud which had to do with
6 downloading from those websites.

7 Q. All right. So let's be clear for the jury. Are you
8 here to give opinions about whether this wrongdoing
9 actually happened?

10 A. No. No.

11 Q. Okay. What's your role in this case?

12 A. My role is to look at the financial and economic
13 implications if the Court and the jury are to decide that
14 Oracle's allegations are correct.

15 Q. So if the jury were to find these things happened,
16 you're here to estimate damages?

17 A. That's right.

18 Q. Okay. Now you show two different companies on the
19 slide. I see Oracle International Corporation, and I see
20 Oracle America. Why do you show those two different
21 companies on this slide?

22 A. So those two subsidiaries of Oracle Corporation
23 overall are the subsidiaries that were involved in this
24 case.

25 So Oracle International Corporation owns the

1 copyrights, they're the copyright holder, and Oracle
2 America provides the direct support services to the
3 customers.

4 Q. All right. So now, once you've reviewed
5 information, done analysis, gotten an understanding of the
6 allegations, let's talk about your work steps in estimating
7 damages.

8 All right. Now, would you explain in slide 5
9 what are the categories of damages that we are going to
10 discuss today?

11 A. So, today we're going to discuss two. There's
12 actual damages, those are measured as Oracle's losses, and
13 there's a number of categories there.

14 And then on the other side is infringer's
15 profits. And those are the benefits that Rimini received
16 from their improper actions.

17 Q. All right. So let's start walking through these
18 categories of documents, and we'll come back to this slide
19 to remind people where we are.

20 Now, let's talk about slide 6.

21 Before we go through these step by step, is this
22 a summary of your -- of the damages that you're estimating
23 in this case?

24 A. Yes.

25 Q. Would you explain this briefly, because we'll be

1 going through it in detail.

2 A. Okay. So, overall, if you took all the claims, and
3 Oracle's allegations were found to be all appropriate and
4 correct, the total damages would be 245.9 million.

5 Q. All right. And I see copyright infringement,
6 128.3 million, interference, 194.1 million, and computer
7 fraud, 14.4 to 34.9 million.

8 Now, if we add all those up, they add up to
9 more -- I don't have my calculator, but I can see that they
10 add up to more than 245. Why is that?

11 A. Well, that's calculating each of the allegations
12 just with respect to them individually. So there are lost
13 support customers for which they're included in the
14 copyright infringement and the interference, for example.

15 So in order to avoid duplication, I can take
16 those out to get to the 245.9 million.

17 Q. Okay. So we'll talk later some more about how you
18 remove that duplication.

19 Slide 7. This is the summary of the
20 interference damages?

21 A. That's right.

22 Q. All right. And we'll go through this in detail.
23 But just explain to the jury in summary fashion what your
24 conclusions are here.

25 A. So, with respect to the interference allegations,

1 they affect the PeopleSoft, JDE, and Siebel product lines
2 where my opinion is that Oracle lost customers in those
3 product lines.

4 And so you can see the amounts, for example,
5 PeopleSoft is 146 and a half million, by far the largest.
6 JDE is 12.7 million, and Siebel is 34.9 million.

7 Q. All right. Let's talk about those lost support
8 customers both for copyright and -- well, and interference.

9 What methodology did you use to measure Oracle's
10 lost profits from lost support customers?

11 A. I used a standard methodology for calculating lost
12 profits and infringer's profits.

13 Q. Would you explain that standard methodology.

14 A. Well, the overview of it is to look at what actually
15 happened financially, determine what would have happened,
16 and the difference is the damages on the lost profit side.

17 Q. Would you go through that one more time so that we
18 can -- so that we can understand it, the before and the
19 after.

20 A. So with respect to what actually happened, Oracle
21 sells software licenses, and then they contract with
22 customers to provide support.

23 What actually happened was that at some point
24 Oracle's contracts ended, and then Rimini's contracts
25 started, and then from that point on Rimini takes over the

1 support revenues from those contracts.

2 In my opinion, what would have happened is that
3 the customers would have -- that some customers, at least,
4 would have stayed with Oracle, and that those contracts
5 would have continued over time, and so Oracle would have
6 made more revenues and more profits.

7 Q. All right. Well, let's talk about that analysis.
8 Let's look at slide 8. Would you describe what this is
9 illustrating.

10 A. So this is illustrating generally what I was talking
11 about.

12 First, there's an upfront license fee. That's
13 not at issue in this case with respect to the application
14 products. What's at issue is the support revenues.

15 The ongoing support Oracle had is demonstrated
16 in the first part of the bar, then there's an interruption
17 because of Rimini's actions, and the rest of the time
18 Rimini gets that money.

19 That's the amount of lost profits after you
20 reprice it at Oracle's price and deduct costs.

21 Q. Okay. So we're going to be looking at that second
22 part of the arrow, what happened in terms of lost profits
23 from the support end.

24 A. That's right.

25 Q. Okay. Let me ask you to look at slide 9 which is an

1 excerpt of PTX 3 which was admitted into evidence.

2 And this is a Rimini Street investment fund --
3 first round investment funding document from 2006.

4 "For investors who are direct competitors of
5 Oracle, or who otherwise benefit from Oracle customer loss,
6 Rimini Street separates Oracle from its acquired licensees
7 denying Oracle recurring revenue and creating new software
8 service sales opportunities in vulnerable accounts."

9 How does this relate to what you were just
10 discussing?

11 A. So, it's important for me to understand how Rimini's
12 business model works, and so this informed my opinion about
13 that, which is that Rimini is taking customers from Oracle.
14 That's how Rimini's business model works in terms of
15 finding support customers.

16 Q. And when it says, "Rimini Street separates Oracle
17 from its acquired licensees," what did you understand that
18 to mean?

19 A. The break in the support contract.

20 Q. All right. And what's your understanding of the
21 level of support that Rimini claims it could provide, the
22 level of support it provided to Oracle's former customers?

23 A. My understanding is that they were providing or
24 claiming to provide vendor-level replacement services.
25 These customers stay on the Oracle software, they just get

1 the support from Rimini.

2 Q. All right. Let's look at slide 10, and let's talk
3 about how you then did your calculation of lost profits.
4 Now, we're going to do the math. So would you explain this
5 slide, slide 10.

6 A. So this is the overall measurement. It's fairly
7 straightforward.

8 We're going to talk a lot about point A which is
9 how you determine the Oracle support revenues that it would
10 have received but for the infringing acts.

11 B, you want to deduct the costs because there
12 are some costs that Oracle avoided because it didn't do
13 this business, and C is the difference.

14 Q. Okay. And the C will be the damages; is that right?

15 A. That's right.

16 Q. All right. So let's look at step 1.

17 The -- I'm sorry. Let's look at slide 11. This
18 is how you went about identifying customers; right?

19 A. That's right.

20 Q. Okay. So let's talk about the identification of
21 customers. Please explain slide 11.

22 A. So the purpose of slide 11 is to develop the
23 population of information that I was looking at.

24 So Rimini Street provided a document that
25 indicated that they had had, over the time period that I

1 analyzed, 364 customers for PeopleSoft, JD Edwards, or
2 Siebel support, and I, you know, do three steps to try to
3 develop the would-have-been revenue.

4 The first is, of those 364 customers, to
5 determine which ones would have stayed at Oracle.

6 Second, I price the amount they would have paid
7 Oracle on an annual basis.

8 And then, third, I apply that price for a
9 duration of time to represent the damages.

10 Q. All right. So just to go over the top part, the
11 first step, there were 364 Rimini Street support customers
12 that Rimini Street provided us that were on PeopleSoft, JDE
13 or Siebel; is that right?

14 A. That's right.

15 Q. All right. So you started from there and decided
16 how much to reduce that?

17 A. That's correct.

18 Q. Okay. The -- now, in step one, then, you had to
19 figure out which specific Siebel, JDE, and PeopleSoft
20 products they had?

21 A. Yes.

22 Q. Okay. Let's look at slide 12, which is an excerpt
23 of DTX 1947 which has been admitted into evidence.

24 Would you explain what this is?

25 A. So, the source that I used to determine what

1 products the customers were paying Rimini support for were
2 the Rimini contracts. So this is an example of a Rimini
3 contract that I reviewed.

4 Q. All right. So let's -- this is an example of the
5 contract.

6 Let's look at slide 13. Is this one the same --
7 this is Exhibit A to that same contract?

8 A. That's right. This is the School District of
9 Pittsburgh.

10 MR. ISAACSON: Matt, can you make that bigger
11 for us? Thanks.

12 There's the SQL thing again.

13 BY MR. ISAACSON:

14 Q. So go ahead and explain how this schedule -- you
15 incorporated these schedules into your analysis.

16 A. So, Exhibit A in Rimini's contracts listed the
17 covered products.

18 So, if you look in the far left-hand side, you
19 can see that this was a PeopleSoft customer, and they had a
20 variety of different releases and patch levels for the
21 actual products that Rimini was providing support on. So I
22 created a database of this information.

23 Q. All right. So you created a database from Rimini's
24 actual contracts of what products they were supporting?

25 A. That's correct.

1 Q. All right. Let's go to another part of the City of
2 Pittsburgh contract, which would be slide 14.

3 All right. What does this show?

4 A. The other piece of information that I needed to do
5 my analysis was the dates. Not all of these contracts
6 started at the same time, they didn't all end at the same
7 time, so I had to look at every contract in order to
8 determine what period of time they were under contract with
9 Rimini.

10 Q. So we've been dealing with -- we'll talk about the
11 specific time periods that you're dealing with, but we've
12 been dealing with a number of years beginning in 2006. But
13 for each customer, you were identifying the specific period
14 they were at Rimini. Do I have that right?

15 A. That's correct.

16 Q. And you created a database of that information?

17 A. That's correct.

18 MR. ISAACSON: All right. Now, slide 15. All
19 right. This seems to be other data that you looked at.

20 Matt, maybe you can make it a little bigger.

21 BY MR. ISAACSON:

22 Q. And can you explain what this is?

23 A. So, as I mentioned before, Oracle's contracts with
24 these customers were voluminous. They have lots of
25 products.

1 So what Oracle was able to provide to me was a
2 database they had already -- that they were already using,
3 the RDS database, and it has a number of columns which you
4 don't even see here. It's very wide and very long.

5 And for every customer I identified every
6 product that correlated with the products that then Rimini
7 started offering service on.

8 This database also told me whether the contract
9 that Oracle had was active with that customer or had been
10 cancelled.

11 Q. And so how did you use this data in your analysis?

12 A. This data was used for two primary purposes. The
13 first was to identify the customer had been an Oracle
14 customer to begin with, and, secondly, when that customer
15 left Oracle, when the customer's contract was cancelled,
16 what the last annual fees were that they were paying on the
17 products that now Rimini is supporting.

18 Q. And so you started off with, I believe, 364
19 customers. Did you look at all the Rimini contracts and
20 all the Oracle data for all 364 of those customers?

21 A. I did.

22 Q. All right. So now let's look at slide 16.

23 Now, we're going back to -- we saw this before.

24 So now you've identified Oracle's lost support
25 customers, and you've done a review of Rimini and Oracle

1 contract data. Are we now going to move to step two?

2 A. Right. There's -- so results of step one, then move
3 to step two.

4 Q. So let's get the results of step one straight then.
5 Let's look at 17. So this is in step one.

6 And we looked at 364 customers, and did you
7 consider all of those customers -- did you use all those
8 customers in your lost profits analysis?

9 A. No, I did not.

10 Q. Okay. So you've excluded how many customers?

11 A. In total, 135.

12 Q. All right. And you included in your lost profits
13 analysis how many of the 364?

14 A. Well, 229.

15 Q. And have you knocked that down one?

16 A. Yes, less one, so 228 now.

17 Q. Why did you go from 229 to 228?

18 A. Because there was a customer, Leads Customers
19 Growth, that met all the same criteria that qualified them
20 to be in damages.

21 But then I was able to hear the testimony of
22 Mr. Ravin who described their -- that situation, and I came
23 to an understanding that the amounts paid that were listed
24 in the financial statements for that customer weren't
25 really for service, so I took that out.

1 Q. Leads Customers Growth, that's Mr. Leake's company,
2 the first customer of Rimini Street who we have alleged is
3 a -- through their emails is not a real customer and money
4 was just going back and forth?

5 A. Right. It was reported in the financials that I was
6 provided, that I've been reviewing for the last three or
7 four years, just like any other customer.

8 And so once I understood that they -- it was
9 really -- I think he described it as a circular
10 transaction, where he gave them money and they gave him
11 money, I just -- I took it out. It's obviously not a
12 customer at issue in this case.

13 Q. Okay. All right. So we have this pie chart.

14 Let's talk about who you excluded from the --
15 from your analysis of lost profits.

16 So the red piece of pie there, no Oracle
17 cancellation. Can you explain that?

18 A. So for 33 customers -- that's the number in the
19 bracket after each category, you can see the size of the
20 pie.

21 For 33 customers there were no -- there was no
22 evidence in the information that I was provided that they
23 cancelled their Oracle contract, and that could have been
24 for a variety of reasons.

25 It could be that the company, or the portion of

1 the company that Rimini is servicing was just an arm and
2 Oracle actually was contracting with a bigger entity.

3 And so that fine level of detail just wasn't
4 provided, couldn't be tracked. Or it could be. There was
5 certainly some circumstances where it appeared that the
6 customer was paying both Rimini and Oracle for support.

7 Q. All right. For some of those customers, you might
8 have a very big corporation, and they would have a unit
9 that dropped Oracle and went to Rimini, but because you
10 can't tell what's going on in that big corporation, you
11 just excluded them from your analysis.

12 A. That's right. Both Oracle and Rimini may not have
13 contracted at the same level. Many of these corporations
14 have dozens of different contracts, for example.

15 Q. Right. The green piece of pie, would you explain
16 that?

17 A. So, there were 39 customers out of the 364 that have
18 actually returned to Oracle. They have relicensed or they
19 have reinstated their old license. So I took those out of
20 lost profits because Oracle is currently servicing those
21 customers.

22 Q. An example of that would be Yum who we've heard
23 about?

24 A. That's right. Yum was a customer of Oracle's that
25 left and went to Rimini, and then it came back to Oracle.

1 Q. All right. How about the purple pie slice?

2 A. That's labeled Not Oracle America. Oracle is
3 obviously a large corporation, international corporation.

4 Rimini had some customers that were not in the
5 United States.

6 And so for purposes of this calculation, I did
7 not include damages for lost profits for 24 of those
8 because those companies have a different relationship with
9 Oracle International Corp, the copyright holder, and just
10 to simplify things, I just did lost profits on companies
11 that were in the United States.

12 Q. All right. And then the -- I guess it's a gray
13 piece of pie, JDE World, what is that?

14 A. Well, sometimes we're not as precise as we could be,
15 and there's been a lot of conversation about JDE in this
16 case, and PeopleSoft too.

17 But there are a lot of different products, and
18 JDE World is a certain product but it's not at issue in
19 this case, but Rimini does service it.

20 So I had to take out any customer that was only
21 under a contract for JDE World, and those customers --
22 they're not included in lost profits or the other bucket,
23 infringer's profits.

24 Q. Okay. When we were talking about JDE in this case,
25 as you say, we're mainly talking about JDE Enterprise, but

1 we're not talking about JDE World; is that right?

2 A. That's right.

3 Q. Okay. And then there's an orange piece of pie,
4 Other. Would you explain that?

5 A. So, the intent of the pie is to tie to the 364
6 customer names. A couple of the pumpkin pie slice, Others,
7 are customers that just haven't started with Rimini.

8 Their names are on the list, but they have no
9 revenues. Most of them, I think 10 of them in the Other
10 category, are companies that showed up on Rimini's list
11 that were the same company but with two different names.

12 So they're included in whichever Other category
13 they actually apply in, and then I just put the second name
14 in Other just so I would add up to 364 in the pie.

15 Q. Is it your opinion with respect to those 135
16 customers that you've excluded, that there would be damages
17 that Oracle suffered for some of those 135 customers, but,
18 to be conservative, you've just excluded them?

19 A. Yes, there would be lost profits for at least the
20 Not Oracle, likely to relicense, and reinstated, and
21 possibly the No Oracle cancellation.

22 Q. And that brings us to 229 -- I should say 228
23 customers that you included in your lost profits analysis.
24 What time period does your damage analysis cover?

25 A. So this is a tad bit confusing. This happens a lot

1 on cases because discovery ends at a certain time.

2 These 364 customers started with Rimini in 2006
3 and were active through September 2011.

4 So that's how I get my base of 364, but the
5 damage period in the case actually comes forward for just
6 these customers through February of 2014.

7 Q. All right. So let's just say that one more time so
8 we have it.

9 The 364 customers are customers of Rimini Street
10 for Siebel, PeopleSoft, and JD Edwards from -- anywhere
11 from the period 2006 through September 2011; is that right?

12 A. That's right. They could have started at any time
13 in that period.

14 Q. Right. And for that set of customers, you have
15 calculated damages through February 2014?

16 A. That's right.

17 Q. All right. You haven't calculated damages for lost
18 customers after September 2011?

19 A. That's right. Oracle, if they lost customers to
20 Rimini after that point in time, that's not in this
21 analysis.

22 Q. All right. The -- now, let's talk about what these
23 customers were -- what products these customers were using.
24 Slide 18. Can you explain this chart?

25 A. Yes. So oftentimes in these cases we get a lot of

1 information, and especially when we have multiple products,
2 it's hard to focus on what the importance or where the big
3 dollars are coming from, so this is always something that I
4 want to look at.

5 So in this case, you can see the breakdown of
6 customers that were active in each of these years, and very
7 quickly after 2006 you see that the PeopleSoft product is
8 the primary product the customers are licensing --
9 supporting through Rimini.

10 Q. All right. So PeopleSoft is the blue part of the
11 bar; is that right?

12 A. That's right.

13 Q. So in 2006, Rimini Street is mainly a Siebel-based
14 business, but as it evolves, it becomes predominantly
15 PeopleSoft? Is that what we're looking at with the blue,
16 red, and green?

17 A. That's correct.

18 Q. Okay. And this chart stops in 2010, but your
19 analysis runs through September 2011. Did you just skip
20 the last year because it's only a part of the year?

21 A. Yes, the bar looks pretty much the same because
22 there's no -- there's not much difference. It's not a full
23 year.

24 Q. Okay. Let's look at it one other way.

25 Slide 19. Here's another pie chart. Would you

1 explain the -- what we're looking at here?

2 A. So in addition to looking at it on a per-customer
3 basis, I wanted to find out on a revenue basis what was
4 driving the business of Rimini.

5 And you can see I've included, just for the 364
6 customers, there are PeopleSoft, JD Edwards, and Siebel
7 revenues, and PeopleSoft is again the vast majority.

8 Q. All right. Now, did you consider in your analysis
9 whether Oracle customers who left Oracle and left for
10 Rimini, if Rimini hadn't been around, whether they would
11 have gone to another third-party support provider?

12 A. Yes, I did.

13 Q. And what did you generally conclude about that?

14 A. I generally concluded that there were very few, if
15 any, options for customers that were seeking vendor-level
16 replacement services.

17 Q. All right. Let's look at a chart about that, which
18 will be slide 20.

19 All right. There's a number of companies listed
20 here. Let's just dispense with one of them.

21 TomorrowNow was shut down in October 2008; is
22 that correct?

23 A. That's my understanding, yes.

24 Q. All right. And is it your understanding that
25 TomorrowNow -- did you -- did you conclude that TomorrowNow

1 was an infringing alternative?

2 A. It was infringing. I would say it's not acceptable
3 because it was infringing.

4 Q. Okay. So now let's talk about these other
5 companies. There's a company column. Are those the
6 third-party support -- some of the third-party support
7 companies?

8 A. Yes. These are some of the companies that I saw in
9 Rimini and Oracle's discovery with respect to customers
10 that -- I mean companies that might have claimed to offer
11 third-party support.

12 Q. All right. What's the second column, product lines?

13 A. That again was information about what potential
14 products they were supporting.

15 Q. So, for example, Spinnaker at the bottom, I think we
16 heard testimony about this, only supported JD Edwards
17 during the period we're talking about?

18 A. That's correct.

19 Q. Okay. Now, so you have some descriptions and
20 Rimini's statements, and then you have acceptable and
21 noninfringing. What's the fourth column?

22 A. So the fourth column is my overall conclusion about
23 whether or not Rimini's customers would have gone to these
24 other entities but for Rimini -- I mean, Oracle's customers
25 would have gone to these other entities if Rimini weren't

1 available.

2 Q. And when you say no in that column, what are you
3 conveying?

4 A. That these were not acceptable and/or not infringing
5 alternatives.

6 Q. Okay. Now what materials did you review in order to
7 do this analysis?

8 A. I was provided open discovery in the case, so I have
9 a tremendous amount of Oracle and Rimini documents. That
10 was the primary information that I looked at.

11 There were also analyst reports. And at times I
12 went online and looked at the companies' websites myself.

13 Q. All right. So let's look at NetCustomer. Why did
14 you conclude no for NetCustomer?

15 A. This was a company that was offshore, I think we
16 heard that from Mr. Yourdon this morning, which is not
17 considered to be an appropriate business model according to
18 Rimini. They classify it as dead wrong.

19 But I was also provided additional information
20 that they never had more than five customers, and
21 ultimately they stopped providing any of these support
22 services in October of 2010.

23 Q. All right. What about Conexus Partners? Why did
24 you say no about them?

25 A. Well, they only offered JDE, and I think there was

1 some debate about whether they even offer EnterpriseOne.
2 They might offer primarily World.

3 But they were not offering a vendor replacement
4 service, they were consultants and affiliates that would
5 work with the company but didn't take over for the vendor.

6 Q. All right. What about your no for LegacyMode? This
7 is another JDE only provider, I guess.

8 A. That's right. LegacyMode was very small, and even
9 before Rimini had many JDE customers, it was already out of
10 business. It went out of business in July of 2007.

11 Q. What about ContinuServe?

12 A. ContinuServe was a PeopleSoft offering. Again, it's
13 not clear that at any level 3 or vendor replacement service
14 intention because Rimini evaluated their service and
15 indicated that they didn't handle tax updates.

16 So with PeopleSoft product that's required. So
17 it didn't -- it didn't do vendor-level replacement service
18 and wasn't very viable.

19 Q. All right. CedarCrestone. Did you also consider
20 CedarCrestone to be unacceptable infringing alternative?

21 A. That's right. Because of the infringement, it was
22 unacceptable.

23 Q. All right. And then you also looked at some other
24 issues about CedarCrestone. You had minor part of its
25 business.

1 Would you explain what you thought of
2 CedarCrestone -- what you concluded about CedarCrestone as
3 a business?

4 A. There was information available from Rimini and from
5 CedarCrestone themselves, Mr. Simmons was deposed, and they
6 were very consistent in that they indicated that
7 CedarCrestone didn't market the service, they didn't
8 provide it to very many people.

9 There were people they were already providing
10 consultation services for, for the most part, and they
11 stopped doing it after a while.

12 Q. All right. Let's talk about the last one then,
13 Spinnaker. Why do you have a no for Spinnaker?

14 A. Well, again, this falls into the question of whether
15 it's unacceptable from the customer's perspective.

16 And one thing we've heard a lot about in this
17 trial is how important these systems are.

18 And the common indication that I saw in the
19 documents in the case is that Spinnaker just didn't have a
20 track record and doesn't have an acceptable level of
21 service for making companies feel that they have the trust
22 and the viability.

23 There were a lot of communications about how
24 they were downsizing, and they were having trouble holding
25 management.

1 There were conversations about how they mostly
2 got customers through acquisition, they weren't taking
3 customers away from Oracle directly but from acquiring
4 other companies or acquiring customers when their other
5 providers went out of business.

6 Q. All right. When you look at all these providers
7 together, NetCustomer, Conexus, LegacyMode -- oh, let me
8 ask you about -- there's a couple names that came up during
9 the trial, Versytec, Abtech, that didn't even make your
10 chart. Why is that?

11 A. Well, I didn't find any evidence that Abtech
12 actually offered this type of service.

13 When I did my research and when I looked at
14 information, it seemed to be only a consulting practice
15 and, in fact, had more to do with -- appeared more to do
16 with hardware than necessarily with offering support.

17 Versytec only supported JDE World, and they were
18 acquired by Spinnaker which, again, when we talk about the
19 number of customers, sometimes it's deceptive because
20 Spinnaker's JDE practice includes that World product which
21 is not at issue in this case. It's not replacing any of
22 the support services for the customers that I analyzed.

23 Q. All right. And so based on your analysis and
24 excluding TomorrowNow for the moment, why do you say that
25 customers would have stayed with Oracle if Rimini Street

1 had not engaged in what we allege are copyright violations
2 and lies to customers?

3 A. Because when the customer is trying to make an
4 evaluation of who they want to have offer their support,
5 they have to go with a customer that's trusted -- I mean, a
6 company that's trusted because these are very important
7 systems.

8 I think you've heard this a number of times, but
9 if you're running a company, and your payroll system fails,
10 or your inventory system fails, or your ordering system
11 fails, that's not acceptable to the business, it's not
12 acceptable to the company, and the company suffers, and
13 their customers aren't happy.

14 Q. All right. Let's look at just a little bit of your
15 analysis that the documents reviewed. Can we look at slide
16 21.

17 Slide 21 is an excerpt from a document where
18 Mr. Ravin, in May 2006, is writing an email to someone from
19 the *Wall Street Journal*.

20 And he says,

21 "Although we talked extensively about the fierce
22 crosstown rivalry between two friends and former business
23 partners at the respective helms of Rimini Street and
24 SAP/TomorrowNow, and why we are -- we are the only two
25 credible, viable players in the space today."

1 Why does that statement that "we are the only
2 two credible, viable players in space today" relate to your
3 analysis?

4 A. That's consistent with the research I found that
5 these other customers that are mentioned sometimes
6 miscellaneously in various documents aren't perceived in
7 the market as being important companies that are taking
8 customers away from Oracle.

9 Q. All right. If we can look at slide 22, which is
10 from the same document. Mr. Ravin's again talking to this
11 person from the *Wall Street Journal*.

12 He mentions Conexus Partners, their failure to
13 establish a proven infrastructure, their failure to gain
14 significant traction, their management team page has been
15 taken down.

16 He mentions LegacyMode, how they don't list any
17 management team or personnel, no clients are mentioned on
18 their website, not likely a stable or significant enough
19 infrastructure investment for serious customers to trust.

20 And then also, "We do not consider NetCustomer
21 or any of the smaller companies I mentioned to be serious
22 players, won't garner any significant market share."

23 How does this relate to your analysis?

24 A. This was very consistent with the other information
25 that was relevant to Conexus, Legacy, and NetCustomer. So

1 in addition to other information that I looked at, that
2 informed my opinion that they would not have been
3 acceptable alternatives.

4 Q. All right. Let's look at slide 23. This is a
5 Rimini Street Confidential Private Offering Memorandum,
6 August 1st, 2007. So it's a little later in time.

7 What's a Confidential Private Offering
8 Memorandum to your understanding?

9 A. So, Rimini Street's a private company, and in order
10 to raise funds they have to go to investors, and so they
11 write these offering memorandums essentially selling stock
12 in the company to raise money.

13 And during these documents they usually describe
14 their business model, their competition, their potential
15 success.

16 Q. So Rimini Street tells potential investors in August
17 1st, 2002, according to industry analyst Forrester
18 Research, there are only two main competitors in the
19 market, Rimini Street and TomorrowNow.

20 That's the same point we were just making
21 earlier when Mr. Ravin was talking to the *Wall Street*
22 *Journal*?

23 A. That's right.

24 Q. And one more, slide 24.

25 Now, this document as I understand it, is

1 generic -- a general set of email language that was
2 available to -- that was made available by Mr. Ravin to
3 other people at Rimini Street.

4 Is that your understanding of this?

5 A. Yes.

6 Q. And so there's a discussion of Spinnaker, and it
7 says, "Well, we have the majority of" -- now, Spinnaker,
8 again, was only JDE; right?

9 A. That's right.

10 Q. So it says, "Well," we "have the majority of TN JDE
11 employees on a worldwide basis. They have never been in
12 this business."

13 They're buying people and contracts. Their
14 management team has zero years of experience.

15 They're counting on a team they brought over to
16 know what they're doing, but they don't even have a
17 vice-president leader.

18 They've got "all the Indians, no chief."

19 "This is a very serious risk for them because
20 they don't understand the nuances of the business."

21 I think it says at the bottom,

22 "Where Spinnaker is literally a 'brand new'
23 company in the market with no track record in this space."

24 Can you explain how this related to your
25 analysis of Spinnaker?

1 A. So, again, this goes to the issue of whether or not
2 Spinnaker was viable in a trustworthy company that people
3 would have been willing to spend money to have support
4 their software when they don't appear to have a credible
5 offering.

6 Q. All right. So did you also give consideration to
7 whether, if these Oracle customers left for Rimini, if
8 Rimini had not done what we allege they had done, that they
9 would have said, okay, we'll do it ourselves, we'll go on
10 self-support?

11 A. I did consider self-support.

12 Q. And what conclusion did you reach from that?

13 A. I concluded from looking at the information that was
14 made available to me that self-support was not a viable
15 option for these types of programs.

16 Q. Why not?

17 A. Well, the landslide of information in the case has
18 been that it's just too risky, that companies internally
19 don't have the depth of IT experience to manage these
20 programs and support these programs, and they don't --
21 they -- if they take that on themselves, they risk the
22 possibility that those employees might leave and -- or that
23 there may be a catastrophic problem that they can't recover
24 from.

25 Q. All right. Is slide 25 on the screen an example of

1 the testimony you reviewed on this point?

2 A. Yes.

3 Q. All right. And how does this testimony relate to
4 your conclusions?

5 A. So, Hastings Entertainment did consider -- we talk
6 about that word consider a lot, a lot of people consider a
7 rot of things.

8 Hastings Entertainment considered self-support.
9 I'm sure they'd heard about it before, but with a
10 relatively quick evaluation, they realized this was just
11 too risky for them.

12 Q. All right. So going back to we have 228 customers.
13 You've talked about the alternatives. Is it your opinion
14 that none of those 228 customers who -- would have left
15 Oracle but for what Rimini did?

16 A. No.

17 Q. Okay. And why -- so how have -- what have you done
18 in your analysis to permit the conclusion that, yes, some
19 of them still would have left?

20 A. So while I feel like it's reasonable to conclude
21 from the information that I've seen that none of these were
22 alternatives, I allowed for the possibility that some
23 proportion of them would have left in the same proportion
24 historically that left Oracle. So I applied Oracle's
25 general attrition rate in all of my analyses.

1 Q. All right. Now, let's look at slide 26. Now, we're
2 back to our analysis.

3 And in the blue bar we've gone from 364 to -- it
4 says 229, it should be 228 customers.

5 So the next step is to determine the last annual
6 amount paid to Oracle. Would you explain that step?

7 A. Well, so, step two and three we kind of threw
8 together.

9 Step two is, again, just pulling from the Oracle
10 data what these customers, the 228 customers were paying
11 Oracle the last time they renewed their support, and then
12 we carry that over the period of time they were serviced by
13 Rimini.

14 Q. All right. And how did you determine the last
15 annual amount paid to Oracle?

16 A. Oracle's contract database did have, for every
17 single line item, an amount that was included in their --
18 as their contract pricing. So it's Oracle's actual last
19 fees paid by that customer.

20 Q. And you're using that information -- you wanted to
21 use the actual information that the customer had been
22 paying Oracle, and so you went and found that information.

23 A. That's right. This is different from some cases. I
24 don't have to estimate, I actually know what they paid
25 because they were actually Oracle customers.

1 Q. All right. Well, let's look on -- so then how you
2 do the calculation in slide 27. Can you explain the
3 calculation on this slide?

4 A. So, remember I mentioned earlier that Oracle America
5 provides support. They do so through their access to
6 Oracle International Corporation's copyrights in this case.

7 So I start with Oracle America's lost support
8 revenue. I apply the specific attrition for these
9 customers. When they stopped using Rimini's support, I
10 assume they would have stopped using Oracle's support, and
11 then I further adjust that for the general attrition rate
12 that we've talked about.

13 Q. Okay. So let's stop with that first box. Oracle
14 America lost support revenue, you have an asterisk there,
15 and it says Less Specific Attrition.

16 Okay. What -- would you explain that to the
17 jury.

18 A. So, we know something about these customers. When
19 they stopped and cancelled their Oracle support, they did
20 not stop using their product. We know exactly how long
21 they used the product because they were paying Rimini to
22 support the product. So we know that they were using it.

23 But not all of these customers use the products
24 through February of 2014. Many of them have shorter
25 periods of time. They stopped using the Oracle product,

1 they stopped getting support from Rimini, and if they had
2 the RP needs they must have changed vendors at that point.

3 Q. All right. So you removed customers who
4 specifically changed vendors; is that right?

5 A. Yes. I mean, I suppose there's some bankruptcies
6 and other things in there, but for the most part, these
7 were circumstances where we know the customer was using the
8 product up until they finally stopped paying Rimini, and
9 then they are no longer using the product.

10 Q. All right. So that specific attrition, what was the
11 effect of that. Over the damages period, how much did that
12 reduce Oracle's lost revenues that you had been estimating?

13 A. So if I had taken all of these same 228 customers
14 and priced out their lost support revenues to Oracle for
15 the whole period until February 14th for all of them, my
16 number would have been 25 percent higher than it actually
17 is by stopping them when they stopped their Rimini support.

18 Q. All right. So you've reduced the revenue base by
19 about 25 percent here, and now you're going to apply a
20 general retention rate.

21 Is that going to further reduce the revenue that
22 you're estimating Oracle lost?

23 A. That's right.

24 Q. Okay. And what's the general retention rate?

25 A. So, we know historically, we've talked about this

1 number a lot, I've seen the numbers up on the screen. It's
2 generally around 95 percent for these products.

3 So when customers decide to stop using the
4 product, they obviously stop their support, and that's what
5 that 5 percent is, the amount of time they stop using the
6 product.

7 Q. All right. That takes us to the blue box, Oracle
8 America Adjusted Lost Support Revenue. You've reduced it
9 by specific attrition and by general attrition. Explain
10 the blue box.

11 A. So what's left is the amount of Oracle America
12 revenues that would have been generated through the damages
13 period.

14 Q. All right. And then I see that you moved that down
15 to the lower row. Could you explain what you're doing on
16 the bottom half of this chart?

17 A. So for the copyright infringement claim, I can only
18 calculate damages for the copyright holder.

19 So I have to look at the relationship between
20 Oracle America and Oracle International Corp who holds the
21 copyright, and they have a revenue sharing arrangement
22 between the two companies.

23 So it's 39 percent of Oracle America's revenue
24 is remitted to Oracle International Corp to pay for the
25 license to have the rights to offer services to its

1 customers.

2 Q. All right. So for copyright damages, you're taking
3 the total amount of adjusted lost revenue and only applying
4 39 percent of that; is that right?

5 A. That's right, the share that the copyright holder
6 would have gotten.

7 Q. All right. Let's illustrate this for the jury in
8 slide 28. Would you explain this illustration?

9 A. So the two companies that we're concerned with here
10 are Oracle International, the copyright holder --

11 Q. Say that again. Oracle international is the --

12 A. Copyright holder, sorry.

13 And then Oracle America who actually is on the
14 ground performing the service.

15 So if Oracle America has a support contract with
16 the customer that's worth a million dollars, the two
17 companies share that revenue.

18 Oracle America gets 61 percent -- this is the
19 way the contract is between these two companies -- and
20 Oracle International Corporation gets 39 percent as a
21 payment for the copyrights.

22 Q. So if Oracle America for the support business gets a
23 million dollars, they pay 39 percent of that to Oracle
24 International for the copyrights?

25 A. That's right. Oracle International -- that's how

1 Oracle International generates revenue, and so it would
2 recognize revenue of \$398,000 on that contract.

3 Q. All right. So then let's look at how you calculated
4 the lost support revenue, slide 29.

5 A. So here's where everyone's eyes glaze over because
6 it's a bunch of math.

7 Q. Right. There's a lot of numbers here.

8 Let's see if we can handle this. Walk us
9 through this slide.

10 A. So this is the lost support revenue. It spans the
11 entire period.

12 There's categories down the left we can talk
13 about, and then the individual columns are the individual
14 application products.

15 So, for example, the lost support revenue that
16 was in the first box on the last slide for PeopleSoft is
17 \$169 million for these 228 customers.

18 Then, when I take out general attrition, I take
19 out 5 percentish. We'll see those exact numbers later, and
20 so I remove another \$6.9 million from the lost support
21 revenue, and that becomes the base of what Oracle America
22 lost in revenues. So for PeopleSoft, again, that's 163
23 million.

24 Q. All right. Let's just stop there. This is just
25 what Oracle America lost; right?

1 A. At that point, yes.

2 Q. And the specific attrition is built into the first
3 line; correct?

4 A. That's right. It's already 25 percent lower than it
5 would be -- I could have made this slide more complicated
6 and started with the gross number.

7 Q. All right. And so take us from Oracle America now
8 to Oracle International.

9 A. So, now here's where we see the revenue sharing. So
10 the 163 million that Oracle America collects as revenue, it
11 remits 39 percent of that, so I multiply by 39 percent, and
12 the amount Oracle International Corp gets from PeopleSoft's
13 lost support revenue in this period of time is
14 63.6 million.

15 MR. ISAACSON: All right. I think, Your Honor,
16 given this is a summary exhibit, I'm told 6002
17 is available. I'd like to move this into evidence -- this
18 slide as PTX 6002.

19 MR. STRAND: Your Honor, I object. It's just
20 expert opinion. It's hearsay. It doesn't qualify as
21 admissible evidence.

22 MR. ISAACSON: Her opinion is admissible
23 evidence. And if the slide expresses her opinion in a
24 complicated way, it's admissible as her opinion.

25 THE COURT: A summary is generally admissible

1 when it serves a purpose of specifying and identifying
2 individual information, and I think that that criteria has
3 been met here. I'm going to admit the exhibit.

4 (Plaintiff's Exhibit 6002 received into
5 evidence.)

6 BY MR. ISAACSON:

7 Q. All right. Now, let's go back to your A, B, and C,
8 slide 30.

9 So now for copyright, we finished A. This is --
10 84.3 million was the number that we had for OIC lost
11 support revenue in the previous slide; right?

12 A. That's right. It was the number all the way on the
13 right in the total column. So that's all three,
14 PeopleSoft, JDE, and Siebel products.

15 Q. All right. So this is just for Oracle
16 International. So let's go to step B.

17 Now, you're going to subtract costs. Let's look
18 at slide 31. Explain how you went about subtracting costs,
19 and I should say incremental costs?

20 A. So, for each Oracle entity they have their own
21 profit and loss statements, income statements, and so I was
22 able to get Oracle International Corporation's, and I
23 looked at their cost structure, and I worked with their
24 accountant to understand what the costs were that might
25 have varied.

1 I don't think that many of these costs would
2 have varied, but in an abundance of caution, I used Oracle
3 International Corporation's actual cost structure and
4 deducted 2 to 13 percent from the damages for potentially
5 increased costs it would have had if Oracle America had
6 continued to service these same customers.

7 Q. And once you have revenues, and you subtract costs,
8 then you have lost profits; is that right?

9 A. That's right.

10 Q. Okay. Now, if Oracle International's incremental
11 costs are between 2 and 13 percent, does that mean its
12 profit margins were between 87 and 98 percent?

13 A. Yes, at the gross profit level, that's true,
14 incremental profit level.

15 Q. Right. And when we say -- when we talk about
16 incremental costs and incremental profits, does that mean
17 Oracle just keeps all that money and doesn't do anything
18 with it?

19 A. No. I mean, one of the reasons why Oracle
20 International is the copyright holder is because they do --
21 Oracle Corporation does research and development.

22 So Oracle International Corp shares in the cost
23 of the massive research and development that builds new
24 products and that builds things like the support patches
25 too.

1 Q. When you do a lost profits analysis and you look at
2 incremental costs and incremental revenues, you don't take
3 that into account; is that right?

4 A. That's right. Oracle Corporation has, you know,
5 16,000 customers on these products. They're going to do
6 the research and development and the support.

7 These particular 228 customers don't cost Oracle
8 additional dollars in research and development beyond what
9 I've already included here if there were additional costs
10 at the support product line.

11 Q. All right. So let's look at slide 32 and sum up
12 Oracle International Corporation's -- the calculation.

13 A. So we go back to that 84.3, that was the lost
14 revenue for Oracle International Corporation. Their costs
15 work out for this period of time to be 7.8 million so the
16 damages for Oracle International Corporation for --

17 Q. I think we have a typo here. It should say 76.5
18 million at the bottom. Sorry about that.

19 A. Yeah, or we could just look at the previous slide,
20 31.

21 Q. Right. Right.

22 So the previous slide -- let's look at that, 31.

23 It's hard to go through a multiple-week trial
24 without at least \$10 million typo.

25 The bottom line is 76.479 million in the lower

1 right-hand corner; right?

2 A. That's correct.

3 Q. All right. So what we just finished talking about
4 were lost profit damages for support customers for Siebel,
5 JDE, and PeopleSoft; right?

6 A. Yes.

7 Q. Okay. Now, we're going to talk about Oracle
8 Database which is also part of this case because we allege
9 infringement of that.

10 Now, for Oracle Database, tell me what method
11 you used to determine Oracle's -- Oracle Database damages.

12 A. So, again, this has to do with going back to
13 understanding the allegations and understanding how those
14 allegations affect the business model.

15 So for the applications, Rimini was actually
16 selling support services. For the database, during this
17 period of time that I studied, Oracle wasn't -- I mean, I'm
18 sorry, Rimini wasn't selling database support to any
19 customers.

20 How they were using the copyrighted material in
21 their business model was that they couldn't actually offer
22 the PeopleSoft, JDE, and Siebel support without having
23 access to Oracle's database, because when they built the
24 local environments, they needed to replicate the whole
25 stack. I think you guys looked at a chart earlier that

1 showed you that.

2 So they were using Oracle Database as a tool in
3 their ability to offer this separate service, but they
4 weren't charging separately for it.

5 Q. All right. And before -- we'll move from slide 32,
6 but before we do, we'll compliment Matt Spalding for
7 adjusting the numbers so quickly to 76.5 million.

8 A. Thank you.

9 Q. All right. Let's move to slide 33 where we're
10 talking about Oracle Database. Explain how you went about
11 calculating Oracle Database damages.

12 A. So the losses to Oracle in this case are lost
13 licensing revenues because, as we've talked about, Oracle
14 licenses its customers to use the database.

15 So first they have to understand what price
16 Oracle charges and then how they calculate that price, and
17 there was a wealth of information.

18 Oracle has -- I think it's called the investment
19 summary that tells clients how they calculate prices for
20 these products, and then they have a price list.

21 So I looked at all that. That got me down to
22 row 3 in terms of figuring out the number of customers
23 benefitting --

24 Q. Okay. Well, let's stop there and pick up the pieces
25 of that.

1 Slide 34, this relates to Oracle Database's
2 actual pricing for its licenses; is that right?

3 A. That's right. Oracle has a global price list for
4 its products, and I turned to the page that had database
5 products on it. This is a price list from December 14th,
6 2007.

7 I looked at the Oracle Database products, and I
8 highlighted enterprise edition as that's the product that
9 was being used by Rimini.

10 Q. Okay. Which one is the price there?

11 A. So it's a little difficult to read, but they have
12 two pricing structures, an end user and a processor
13 license.

14 And my understanding from looking at the
15 investment guide was that this would be a processor
16 license.

17 These amounts in this processor license column
18 are actually dollars, so the 30,000 that I have highlighted
19 is the price per processor that a customer would pay to buy
20 Oracle Database.

21 Q. So that was the price list on December 14th, 2007.
22 Let's look at slide 35 which is dated December 18th, 2008.
23 Did the price go up?

24 A. Yes, for the duration of time that I looked at
25 Oracle's price list, this is the one time that I saw the

1 price change.

2 Q. All right. And after December 18th, 2008, and
3 through the time period you were estimating damages, did
4 the price increase about 47,500 after that?

5 A. No.

6 Q. All right. So now, you've got the price. Let's
7 look at slide 36 which -- it looks very complicated. Can
8 you explain how this fits your analysis.

9 A. So when we talk about the price, that's the price
10 per processor because Oracle's practice is to price their
11 product based on the computing power that's using the
12 database. So large customers that are using a lot more
13 computing power pay more for their Oracle Database license.

14 Q. All right. And how do you figure out from this how
15 to -- what the right price is?

16 A. So for Rimini's actual installations of Oracle
17 Database, they provided me a lot of specific information.
18 They provided me every instance that they have available
19 that was associated with a customer.

20 So I can actually see the customer. If you look
21 at that sort of top pulled-out section on the far
22 right-hand side, you can see that this is Bausch and Lomb,
23 and they have four Oracle Database environments for Bausch
24 and Lomb.

25 To figure out how to price it, I deal with the

1 second line, the server configuration, the processor type,
2 the CPUs and cores, and that software investment guide gave
3 me a formula.

4 So essentially I apply that formula to this
5 information, and it tells me how many multiples to charge
6 of the 40,000 or the 47,500.

7 Q. All right. So let's go back to our chart, slide 37.
8 So now we've got step one, Oracle Database's license -- the
9 actual price list, and we have the hardware configuration,
10 and now we're moving to number 3, number of Rimini Street
11 customers benefitting.

12 A. And so there were 72 customers that were in that
13 data that was provided me.

14 Q. Now, when you say 72 customers, that's 72 different
15 customers who were on -- who had Rimini Street environments
16 running Oracle Database, and that was a stipulated number
17 amongst the parties?

18 A. That's correct.

19 Q. Okay. And did some customers -- some of those 72
20 customers have more than one environment?

21 A. Yes, like the example we saw, Bausch and Lomb had
22 four. It wasn't that unusual to have multiple
23 environments. I think there were over 180 on the list.

24 Q. Okay. Now, why did -- why did you use the Rimini
25 server configuration to price the license? Why not use

1 some other configuration?

2 A. Well, what I've been trying to measure is the actual
3 damage, and that's based on the actual use.

4 So Oracle's policy is to price their database
5 license based on where the product is actually installed.
6 So this would be the same method that Oracle would use for
7 any customer.

8 Q. Okay. And why is there a license fee per customer?
9 Why not just one licensee fee to Rimini Street?

10 A. Well, again, this goes to the Oracle pricing
11 guidelines.

12 If Oracle were just to allow a customer to pay
13 for one product, or one installation, and yet benefit
14 hundreds of other companies, then Oracle wouldn't have much
15 of a business model.

16 They need to charge a license for their software
17 to each customer that's going to gain a benefit from that
18 software. So I used the 72.

19 Q. So I'd have a pretty good business if there were
20 only -- if I could just take in thousands of customers and
21 just pay one license fee.

22 A. That's right. So this is the way in which Oracle
23 sort of meters it. They meter it based on each company
24 paying for their company's use.

25 Q. All right. Did only 72 Rimini customers benefit

1 from Rimini's use of Oracle's database software?

2 A. No, that's not my understanding.

3 Q. Okay. But did you determine a price or damages -- a
4 price of licenses or damages for any additional customers
5 other than those 72?

6 A. No, I did not consider or try to determine a price
7 for customers that -- where environments, other customer's
8 environments were used for another customer's benefit.

9 Q. All right. So let's go to slide 38, and let's
10 calculate the Oracle Database damages.

11 We looked at the licenses, the 40,000 and
12 47,500. Would you explain the support figure?

13 A. Just like the applications that we talked about
14 before, when you have an Oracle Database license, you have
15 the ability to upgrade, to add patches, fixes, and that's
16 priced at 22 percent annually of the original license fee.

17 Q. All right. Would you explain item two, one to six
18 processors.

19 A. So, again, that's based on the Rimini hardware
20 configuration for where these environments had actually
21 installed Oracle Database.

22 I took the largest installation, which is also
23 consistent with Oracle's practices when a company has
24 multiple installations.

25 Q. All right. We talked about the 72 customers.

1 So number 4, now you're subtracting, as I
2 understand it -- oh, no, I'm sorry, that's the lost
3 revenue, 20.2 million, and then you're going to subtract a
4 number to get to 19.2 million. What happened there?

5 A. Well, so just to clarify, so the 20.2 million is the
6 accumulation of the license revenue and the support revenue
7 for the period of time that the environment -- from the
8 time the environment was built until the customer stopped
9 getting the application support.

10 So very possibly Rimini still has that Oracle
11 Database environment, but I stopped the math, and that's
12 why it's 20.2 million, or it would be much, much larger at
13 the time when Oracle -- I mean, Rimini stopped collecting
14 application support revenues from these customers.

15 And then it drops from --

16 Q. And just to interrupt you, you're saying you didn't
17 actually investigate whether Rimini still has this stuff or
18 how long they had the Oracle Database, you just stopped it
19 when they stopped using the related environment?

20 A. I stopped it when they stopped receiving revenues
21 from customers on that application.

22 Q. Right.

23 A. So if Bausch and Lomb had stopped in 2010, I
24 wouldn't charge a database license support fee past that
25 time period.

1 Q. Okay. And then you subtracted a number to get to
2 19.2 million. What did you do there?

3 A. So, again, we're in Oracle International
4 Corporation.

5 I talked to Oracle personnel. They said that
6 there would not have been any incremental costs to
7 licensing Rimini for this business.

8 But, again, in an abundance of caution, I put a
9 5 percent amount in. So I took out 5 percent of the
10 revenues to cover any potential incremental costs.

11 Q. All right. Now, in your opinion, if Rimini and
12 Oracle had been required to negotiate the fair market value
13 of a license for Rimini's use of Oracle Database, if Rimini
14 had actually had to pay when Rimini first launched, what
15 amount would Rimini have paid to Oracle?

16 A. So, if this were measured as a hypothetical license
17 between the two companies when they negotiated, I believe
18 that they would have negotiated for this amount, the
19 19.2 million.

20 And the reason that I believe that is because
21 Oracle's software investment guide and price list is there
22 for any customer to see and use, and this is exactly how
23 Oracle would price it. So that's sort of Oracle's side of
24 the negotiation.

25 And then on the Rimini side of the negotiation,

1 I understand Mr. Ravin testified in his deposition that
2 if -- you know, if he's not covered by his claims in this
3 case or his defenses in this case, that he would pay the
4 commercial price that any customer would pay.

5 MR. ISAACSON: All right. Your Honor, at this
6 point we're going to begin another calculation, if this
7 would be a good breaking point.

8 THE COURT: Good time for a break, and I have no
9 problem with that.

10 Ladies and gentlemen, we'll take our second
11 break, 15 to 20 minutes, again, depending on when you're
12 ready.

13 And same admonitions apply.

14 You may go ahead and step down.

15 COURTROOM ADMINISTRATOR: Please rise.

16 (Recess from 11:57 a.m. until 12:23 p.m.)

17 (Jurors enter courtroom at 12:23 p.m.)

18 THE COURT: Have a seat, please.

19 The record will show that we're reconvened
20 following the second break and in open court. The jury's
21 all present.

22 And, Mr. Isaacson, go ahead, please.

23 MR. ISAACSON: Good afternoon, Your Honor.

24 BY MR. ISAACSON:

25 Q. Good afternoon, Ms. Dean.

1 Let's explain where we were, the category of
2 damages.

3 So we looked at this before when we talked about
4 the category of damages. Now, at this point, we've talked
5 about lost support customers and profits for Oracle
6 International and the lost database; correct?

7 A. That's correct.

8 Q. All right. Let's move over to this category on the
9 right, Infringer's Profits, Revenue on Support Services.

10 What is -- and this is -- what is this last
11 element of Oracle's copyright infringement damages that you
12 have as infringer's profits based on revenues?

13 A. So, in a copyright infringement claim there are a
14 number of different remedies available.

15 When I measure lost profits, that's, of course,
16 an available remedy. If there are customers that Oracle
17 didn't experience lost profits for, or that I haven't
18 included in my measurement of lost profits, the law allows
19 the recovery of infringer's profits.

20 Q. That's your understanding, in any event?

21 A. Absolutely. That's my understanding of why I would
22 do that calculation.

23 Q. The -- now, in terms of the infringer's profits, we
24 talked about the 228 customers that you had lost profits
25 for. Are you calculating infringer's profits for those

1 customers?

2 A. No.

3 Q. Okay. What set of customers are you calculating
4 infringer's profits for?

5 A. So if we think back to the pie chart, there were
6 certain categories on the pie chart that would be
7 appropriate for infringer's profits.

8 Q. Okay. All right. Now, let's look at how you went
9 about calculating the money that was earned by Rimini for
10 those other customers.

11 Can we look at slide 40. All right. Can you
12 explain to us what we're looking at?

13 A. Yes. Rimini made available to me during the
14 discovery of the case, I guess produced to all parties and
15 then sent to me, monthly revenue recognition accounting
16 documents, and they were laid out by customer.

17 So what I did was I took the customers that I
18 had included in infringer's profits, and I used this
19 document to accumulate all of the revenues that Rimini has
20 recognized for them from start of their service period
21 until it either ended or February of 2014.

22 Q. All right. So you added up the actual numbers
23 earned by Rimini according to their records for that other
24 group of customers. Is that what you did?

25 A. That's correct.

1 Q. All right. So let's look at slide 41.

2 Here you've got the profits, revenues, customers
3 not -- for the customers not included in lost profits
4 broken down by category. Would you explain this.

5 A. Yes, and just to be clear, the segments of the pie
6 that weren't included in lost profits, Not Oracle America
7 Relicensed and No Oracle Cancellations are the categories
8 that go into infringer's profits.

9 I don't claim infringer's profits for JDE World
10 or for most of those others. There were two small in
11 others that I kept in with the rest. Remember, we talked
12 about, it was just a naming convention so they don't go
13 into this calculation.

14 So all I've done here is I've accumulated
15 Rimini's revenues for just that smaller group of customers
16 by product line.

17 MR. ISAACSON: All right. Your Honor, this
18 slide summarizes a large amount of underlying calculations.
19 I would move it in as PTX 603 as a summary of her opinion
20 with respect to -- 6003 with respect to her opinion.

21 THE COURT: Mr. Strand?

22 MR. STRAND: Same objection, Your Honor.

23 THE COURT: All right. The Court will make the
24 same ruling. The summary is useful for purposes of
25 summarizing some rather complicated and complex basis. It

1 is admitted.

2 (Plaintiffs' Exhibit 6003 received into
3 evidence.)

4 BY MR. ISAACSON:

5 Q. All right. Let's look at slide 42.

6 So now we're to the point where we can give your
7 opinions about the copyright damages as a whole; is that
8 correct?

9 A. That's correct.

10 Q. Okay. Would you explain slide 42.

11 A. So on this slide and the next few slides we'll look
12 at, I've taken all the numbers that we've talked about and
13 I've just put them by product each on one page.

14 So this is PeopleSoft's damages. The top row is
15 the actual damages, measured as the lost support customers,
16 \$57.7 million.

17 And the second row is Rimini's infringer's
18 revenues for just those customers that have PeopleSoft that
19 aren't already claimed under the Oracle's lost profits. So
20 that's 28.4 million.

21 The two together would be total damages for the
22 PeopleSoft product of 86.1 million.

23 Q. Okay. So like it says in the upper right-hand
24 corner, PeopleSoft, this is the copyright damages that you
25 estimate for just the infringement of the PeopleSoft

1 copyrights.

2 A. That's right.

3 Q. All right. The next slide says Oracle Database.
4 That's what we were looking at right before the break, the
5 19.2 million?

6 A. That's right.

7 Q. That's your estimate of the license that would have
8 been paid.

9 A. Right, either measured as actual damages so a lost
10 license profit to Oracle International Corp, or measured in
11 this other hypothetical negotiation, either one, would be
12 19.2 million.

13 Q. All right. Then we -- the next slide is JD Edwards.
14 So this adds up to 7.1 million; is that correct?

15 A. That's right. JD Edwards was a much smaller part of
16 their business.

17 Q. Okay. And the next slide, slide 45, is Siebel, that
18 adds up to 15.9 million?

19 A. That's right.

20 Q. All right. Then slide 46, this is your summary of
21 the copyright damages?

22 A. Right. So here, I've taken that information and
23 just put it on one page to make it easier, you can see how
24 it totals. All the amounts are broken down, and then the
25 total for all these products is 128.3 million.

1 MR. ISAACSON: All right. I would move slide 46
2 at PTX 6004 for the previously stated grounds.

3 MR. STRAND: Same objection.

4 THE COURT: Same ruling. And the objection will
5 be viewed as continuing.

6 MR. STRAND: Thank you, Your Honor.

7 (Plaintiffs' Exhibit 6004 received into
8 evidence.)

9 BY MR. ISAACSON:

10 Q. So now we've concluded the discussion of copyright
11 damages, so let's talk about interference damages.

12 Let's look at slide 47. I think you've
13 previously said that you start with trying to understand
14 the allegations.

15 Can you give us your understanding of what
16 Oracle's alleged Rimini Street did as it relates to
17 interference with Oracle's customer relationships?

18 A. Yes. Just as a general matter, it was the
19 misrepresentations that Rimini Street made to its
20 customers, and then its improper access to Oracle's
21 websites.

22 Q. And, again, you're not here as a damages expert to
23 give an opinion about whether those allegations are true,
24 you're here to assist the jury in the event that they
25 decide those allegations are true?

1 A. That's right.

2 Q. All right. So this one -- let's look at your method
3 for here, and let's look at something that looks familiar,
4 slide 48.

5 A. Fortunately, we're getting to the repetitious part.
6 Because the wrongdoing also affected the same support
7 contracts, I used the same method.

8 Q. All right. Repetition is good. That means we've
9 already done it.

10 A. Yes.

11 Q. All right. So for calculating interference damages,
12 you're using the same method, but you're going to apply it
13 to the interference question; right?

14 A. That's right.

15 Q. Okay. So let's look at slide 49. We looked at this
16 before. And explain how this relates to the interference
17 damages.

18 A. So the interference damages are going to affect both
19 Oracle International and Oracle America because Oracle
20 America is a plaintiff in the claim for interference
21 damages. They actually do the work related to the support
22 contract with the customer.

23 So in the interference damages with all the same
24 customers we talked about before, instead of just taking
25 the 39 percent, I get to take the whole calculation into

1 account.

2 Q. Okay. So now we're going to look at both Oracle
3 America and Oracle International's damages for the
4 interference equation, and you said for the same customers.

5 For the interference estimates, did you look at
6 the same group of 228 customers reduced from 364?

7 A. I did.

8 Q. Okay. All right. So let's look at slide 50. We
9 looked at this before, and it was admitted into evidence so
10 the jury would be able to see it.

11 And explain now how this relates to the
12 interference damages.

13 A. So, when we do the same calculation that we talked
14 about before, the Oracle America revenues are now relevant.

15 Before we just used them as a tool to get to
16 Oracle International Corp's, but now we actually use the
17 Oracle America's revenues to calculate damages and the
18 Oracle International Corp's to calculate damages.

19 Q. All right. So which line has the interference
20 damages?

21 A. So, the 216 million would be the total revenue that
22 both companies would benefit from. They still have to
23 split it out because they have different cost structures,
24 so I have to deduct their costs separately in order to get
25 the real number we're looking for which is lost profits.

1 Q. Okay. And you have done that cost calculation and
2 reduced it for the costs; correct?

3 A. That's right.

4 Q. Okay. So let's look at slide 51. Is this a summary
5 of the interference damages that you have estimated?

6 A. That's right. So when I take the 216 million, and I
7 take out the costs for each company independently, it's
8 194.1 million, and you can see -- we've talked about this
9 slide before, you can see the breakdown of the three
10 application products.

11 MR. ISAACSON: All right. I would move slide 51
12 into evidence, as a summary of her opinion, as 6005 for the
13 grounds I stated before, Your Honor.

14 THE COURT: All right. It will be admitted, and
15 the objection will be.

16 COURTROOM ADMINISTRATOR: Do you want it 4 or 5?

17 MR. ISAACSON: Four is next? Let's do it 6004.

18 (Plaintiffs' Exhibit 6005 received into
19 evidence.)

20 BY MR. ISAACSON:

21 Q. All right. Now, when we were talking about the
22 category of damages, there's something called computer
23 fraud, and we'll talk to the jury about that in closing
24 argument, but you estimated damages for that.

25 That relates to the automated downloading; is

1 that correct?

2 A. That's correct.

3 Q. Now, slide 52, would you explain what you did to
4 determine Oracle's damages related with computer fraud
5 allegations, and maybe start with the simple amount, the
6 27,000.

7 A. The second line, Oracle's Investigation Costs?

8 Q. Yes.

9 A. Okay. Those were calculated at 27,000 because those
10 are labor costs for actual Oracle employees for short
11 durations of time in November, December of 2008 and January
12 of 2009, when they were investigating why the computer
13 systems were stalling or deadlocking.

14 Q. And you actually calculated that. How did you do
15 that?

16 A. I was provided information from Oracle as to the
17 individuals who were involved in the investigation, what
18 their salaries were, and how many hours they spent working
19 on the investigation.

20 Q. People like Mr. Renshaw?

21 A. Exactly.

22 Q. All right. Now, let's go up to the lost support
23 customers. There's two numbers here. What is the higher
24 number, 34.9 million?

25 A. So, these are Oracle's losses from lost support

1 customers for Siebel, and that's the total amount of lost
2 profits for the Siebel customers that Rimini had under the
3 assumption that the business model for Siebel was
4 completely developed on the back of these automated
5 downloads and the library and the mass downloading.

6 So if the jury were to find that that's the
7 conclusion as to what the computer fraud damages are, it
8 would be 34.9 million.

9 Q. All right. So if the evidence shows that the
10 automated downloading was the basis on which they built
11 their Siebel business, then your opinion would be the
12 \$34.9 million would be appropriate?

13 A. That's right.

14 Q. Okay. And are those the -- the Siebel customers,
15 those are the customers for Siebel that were included in
16 your previous calculations?

17 A. That's right.

18 Q. You used the same methods but just applied it to
19 just the Siebel?

20 A. That's right.

21 Q. Now, let me ask you about the 14.4 million, but let
22 me show you a piece of testimony.

23 Now, you were here when Christian Hicks
24 testified, I believe?

25 A. Yes, I was.

1 Q. Now, he was the one who testified about the
2 automated downloading, and he was asked which customer IDs
3 were ultimately used as part of this KM crawl, that was the
4 crawl that he was discussing, and he listed the IDs for
5 specific customers.

6 And did you go to your lost profits calculations
7 and add up the lost profits that you estimated for those
8 specific customers?

9 A. I did. In some cases, they're not in the lost
10 profits so I didn't add anything, but in the instance that
11 I was already claiming lost profits for them, they
12 accumulate to that \$14.4 million.

13 Q. All right. So that's how you got 14.4 million.

14 If the jury were to conclude that the
15 appropriate measure of damages for the automated
16 downloading would relate to the customers whose IDs were
17 used, your opinion would be the damages should be
18 14.4 million for that?

19 A. That's correct.

20 Q. Okay. So let's summarize. Slide 54.

21 We looked at this before at the beginning when
22 we started. So can you summarize, having gone through the
23 analysis, what we're looking at here?

24 A. Okay. So it's probably best to start with the
25 middle of the document. So the allegations are all laid

1 out, and the total amount of damages, both actual damages
2 and infringer's profits, for example, for the copyright
3 infringement claim are listed here.

4 So for copyright infringement the total damages
5 are 128.3 million, for interference, 194.1 million, and
6 computer fraud either the 14.4 million or 34.9 million
7 depending on what your assumptions are.

8 Now, we talked about -- a little bit how many of
9 these have the same lost support customers in them, so if
10 you clean all of them up, if you award all of them, then
11 you only want to maximize the award at 245.9 million or
12 else it would be too much money involved.

13 Q. And explain why this duplication that you had to
14 weed out?

15 A. So as we talked about the -- we used the same
16 customers for the copyright infringement, interference, and
17 for the portion of lost support in the computer fraud.
18 They're just different accumulations of those customers.

19 So once I take out any overlap of the customer,
20 so it only gets counted once, then it's 245.9.

21 Q. All right. And the computer fraud number, with the
22 exception of the \$27,000, the 14.4 to 34.9 million, either
23 one of those numbers would duplicate figures that are in
24 the interference damages; is that right?

25 A. That's right. The same plaintiffs are for the

1 computer fraud as the interference, so it's the same
2 calculation.

3 Q. Right. So if the jury were to conclude we're
4 entitled to interference damages and computer fraud
5 damages, we would not get both of those figures?

6 A. That's right.

7 Q. Okay. Now, in addition to giving --

8 MR. ISAACSON: I would move -- this slide 54 as
9 PTX 6005 for the previously stated reasons, and I imagine
10 subject to the same objection.

11 MR. STRAND: Indeed.

12 COURTROOM ADMINISTRATOR: There seems to be some
13 confusion. So I have slide -- I apologize for this. I
14 don't want to get too out of order.

15 MR. ISAACSON: I'm sure it's our fault. I'm
16 sure it's our fault.

17 COURTROOM ADMINISTRATOR: Because they are not
18 marked.

19 MR. ISAACSON: Right.

20 COURTROOM ADMINISTRATOR: I have 51 as PTX 6004.

21 MR. ISAACSON: Right.

22 COURTROOM ADMINISTRATOR: And PTX 6003 is slide
23 41.

24 MR. ISAACSON: Yes.

25 COURTROOM ADMINISTRATOR: And 6002 is what

1 slide?

2 MR. ISAACSON: I believe it is -- I'm coming to
3 it; 29. Yes, 29.

4 COURTROOM ADMINISTRATOR: So those are the only
5 ones that have been admitted.

6 MR. ISAACSON: Slide 46. And then we should
7 make 46 -- slide 46 is 6004.

8 COURTROOM ADMINISTRATOR: Okay. So 46 is PTX
9 6004.

10 MR. ISAACSON: Yes.

11 COURTROOM ADMINISTRATOR: 51 is 5. And 54
12 should be 6. Correct?

13 MR. ISAACSON: Right.

14 COURTROOM ADMINISTRATOR: I'm sorry, Your Honor.

15 THE COURT: No problem. I think we have it
16 straightened out.

17 (Plaintiff's Exhibit 6006 received into
18 evidence.)

19 MR. ISAACSON: We appreciate that.

20 BY MR. ISAACSON:

21 Q. Now, in addition to those calculations where you
22 added up all those damages, you did those same calculations
23 for copyright infringement and interference customer by
24 customer; isn't that right?

25 A. That's right.

1 Q. Hopefully you have PTX 5469 in your binder.

2 A. Yes, I do.

3 Q. All right. Is this a schedule you prepared?

4 A. Yes.

5 Q. All right. Is this based -- there's a number of
6 columns here for lost -- copyright lost profits and
7 interference lost profits and non-overlapping lost profits.
8 Are those all taken from schedules to your report?

9 A. Yes, they are.

10 Q. All right. And does this summarize a great deal of
11 information that was analyzed and collected?

12 A. Yes, it does.

13 Q. All right. And this represents the -- your -- this
14 is the same opinion on damages that you've been giving for
15 copyright and interference, but it's customer by customer
16 now; is that right?

17 A. That's correct.

18 MR. ISAACSON: All right. I would move into
19 evidence PTX 5469.

20 MR. STRAND: Same objection, Your Honor.

21 May I approach the bench?

22 THE COURT: Yes.

23 (Sidebar conference held as follows:)

24 MR. STRAND: Your Honor, I'm not going to
25 restate my objections to those.

1 This gives the false appearance in detail which
2 does not actually exist. These are just schedules out of
3 an expert witness report which are historically nothing but
4 hearsay and not admissible in evidence.

5 This gives the wrongful indication that she has
6 done a customer-by-customer analysis of causation. She has
7 not.

8 So we have a great deal of detail here which
9 displays nothing. I think it gives a false impression to
10 the jury, it's misleading, it's hearsay, it's 403, it ought
11 not to come in.

12 MR. ISAACSON: That's inaccurate.

13 All right. So, first of all, it's an accurate
14 summary of her opinions, and all this detail is taken off a
15 schedule to her report.

16 And this is her estimates for damages for each
17 of these customers, and our evidence and her opinion is
18 this business is entirely built from the beginning on
19 copyright infringement and lies, and that accounts for
20 every last one of these customers.

21 This business does not exist without what we
22 have shown has happened.

23 MR. STRAND: Obviously we vigorously disagree
24 with that. The bottom line, your Honor, is it's still her
25 opinion, it's still inadmissible hearsay.

1 I've never ever been able to get an opinion in
2 from an expert witness. This is just like putting in her
3 written opinion. That's the basis of my objection.

4 We're way over the line already with the
5 previously admitted summary exhibits he's got in. Now
6 we're getting into the actual, actual detailed schedules.

7 He says they're schedules. That's a further
8 reason they ought not to be coming into evidence.

9 MR. ISAACSON: Everything she says is an
10 opinion. This is a summary exhibit of her opinions that
11 will be of assistance to the jury.

12 If they start to argue you shouldn't consider
13 this customer or this group of customers, the jury will
14 have in front of them her opinions on the lost profits
15 damages and the interference damages for customer by
16 customer.

17 MR. STRAND: And what that does, Your Honor, is
18 subtly attempt to shift the burden of proof in this case.

19 It's critical that the Court understands that it
20 is their job to prove customer by customer for 364
21 customers that what they say is true that the infringement
22 caused that customer to leave, or the misrepresentation
23 caused that customer to leave, or that the database
24 abuse -- I mean, the website abuse caused that customer to
25 leave.

1 They simply cannot make that proof, and they are
2 trying to give the impression to the jury that they have.
3 They have not.

4 MR. ISAACSON: We have resoundingly met that
5 burden of proof. We have shown through the early
6 customers, the pilot customers, the referral customers,
7 that all of them are based on copyright infringements, and
8 we have shown that all of these lies were standard messages
9 to all of the customer's from the get-go. This business
10 doesn't exist without it.

11 Now, if they want to start to pick off some of
12 those customers in their defense, this schedule will be of
13 assistance to the jury.

14 MR. STRAND: And that's my whole argument on the
15 shifting of burden, Your Honor. I think you probably heard
16 more than you want to hear.

17 THE COURT: I have. That I can tell you.

18 But I'm going to admit it and give a limiting
19 instruction.

20 MR. STRAND: Thank you, Your Honor.

21 (Sidebar conference concluded.)

22 THE COURT: Ladies and gentlemen, as you've
23 certainly been able to see during the course of Ms. Dean's
24 testimony, there's been several exhibits that the Court has
25 admitted as summaries.

1 When I admit these exhibits as summaries, they
2 are not being admitted for the truth -- what we call the
3 truth of the matter asserted. In other words, they're
4 admitted to show what her calculations are and what they're
5 based on.

6 It will ultimately be up to the jury to reach
7 the factual determination what are the damages in this
8 case, what is involved that makes up those damages, and to
9 the extent that these charts or summaries assist you, that
10 is why they are being admitted. But they are not
11 substantive evidence of the damage itself.

12 You're hearing the witness testify because of
13 her study and her qualification in this as you deem it --
14 let me step back a point.

15 You've heard several what we call expert
16 witnesses, and Ms. Dean is certainly such a witness.

17 You consider an expert witness's testimony under
18 the same criteria as you consider any other witness's
19 testimony. And you'll have an instruction to that effect
20 at the end.

21 These exhibits are only admitted for the purpose
22 of assisting you in understanding her testimony. They are
23 not proof that this event occurred or that event occurred.
24 They are only being offered as a summary to help show upon
25 which her opinion is based.

1 And you will decide concerning the evidence in
2 this case and the evidence from each witness. Those are
3 functions that are exclusively reserved for the jury.

4 So I am admitting this exhibit, Plaintiffs'
5 5469, because it is such a summary. It is not being
6 admitted for the truth of the matter asserted.

7 For example, if it states that X company
8 suffered X amount of damage, that's only to explain why --
9 how she reached these numbers she's presented to you.

10 Whether you make such a finding, or you feel
11 that those kind of numbers, or if there's liability or all
12 of the questions that are submitted to you at the end of
13 the case support that or don't support that, those are the
14 decisions that are ultimately made by the jury.

15 So I make these comments in the interest that it
16 helps to understand the summaries that have been admitted
17 into evidence, and we have -- this is the last of the
18 summaries, well, I don't know if it's the last --

19 MR. ISAACSON: It's the second to last, Your
20 Honor.

21 THE COURT: But I can tell you that we have --
22 this will be the sixth one that is admitted, and the
23 numbers from those I'm sure counsel will be referring to in
24 the course of the case and final statements, I would
25 assume.

1 So with that stated, Mr. Isaacson, you may go
2 forward.

3 MR. ISAACSON: All right. And then one last
4 exhibit. Well, actually, yeah, let's show the jury what
5 this looks like.

6 BY MR. ISAACSON:

7 Q. Again, this is a summary of your opinions; right?

8 A. That's right.

9 MR. ISAACSON: And at the top there's a column
10 for copyright lost profits. Can you make that bigger,
11 Matt? To pick up the customer names over on the left.
12 There you go.

13 BY MR. ISAACSON:

14 Q. All right. So customer by customer you've indicated
15 the product line and you've -- based on your opinions and
16 the analysis that you've described, this is the amount of
17 copyright lost profits for each customer, the interference
18 lost profits for each customer, and then the nonoverlapping
19 lost profits so that you don't have that duplication.

20 A. That's correct. That's how you would read across.

21 Q. And this is just the same methods that you've been
22 talking but applied customer by customer.

23 A. That's right. I did the analysis customer by
24 customer, obviously, and in the presentation we build it
25 up.

1 Q. All right. PTX 5470, which should be in your
2 binder --

3 A. Yes, it is.

4 Q. Is this a summary of your analysis of infringer
5 revenues which you talked about, that other group of
6 customers and the profits that Rimini earned customer by
7 customer?

8 A. Yes, it is.

9 MR. ISAACSON: All right. So I would move 5470
10 into evidence subject to the continuing objection.

11 MR. STRAND: Subject to the same objection, Your
12 Honor.

13 THE COURT: It is admitted, and my limiting
14 instruction would apply to this as well.

15 (Plaintiffs' Exhibit 5470 received into
16 evidence.)

17 BY MR. ISAACSON:

18 Q. All right. And so let's -- 5470, just so we
19 understand what it is, this is customer by customer, and
20 you have infringer revenues.

21 And let's pick up a little -- let's go down a
22 little farther so we get some of the -- there we go.

23 So over on the right you've got some zeros and
24 you've got some numbers, and just explain -- remind the
25 jury what you said about infringer revenues.

1 A. So, in the instance that you award lost profits,
2 those customers get calculated in the lost profits Other
3 schedule that we just admitted.

4 In this schedule I've given you for each
5 customer their Rimini revenues, that's the infringer's
6 revenue column, the third column over, and then what amount
7 I included in the calculation of lost profits that I did.

8 So, for example, for Access Intelligence, it's a
9 JDE product line, Rimini made \$78,775 off it, but there's
10 nothing in the last column because Access Intelligence is
11 already accounted for as a lost support customer for
12 Oracle.

13 So the way that you could use the schedule is
14 if, for some reason, you didn't think that Access
15 Intelligence should be in lost profits, then that 78,775
16 slides over into that excluded customer on this infringer's
17 profits. They work together.

18 MR. ISAACSON: Thank you. I have no further
19 questions.

20 THE COURT: All right.

21 Ocross-examination.

22 MR. STRAND: Thank you, Your Honor. I'll get
23 organized.

24 May it please the Court?

25 THE COURT: Yes, go ahead, please, Mr. Strand.

1 CROSS-EXAMINATION

2 BY MR. STRAND:

3 Q. Good afternoon, Ms. Dean. How are you doing?

4 A. Good, thanks.

5 Q. It's been a while. It's good to see you again.

6 I'd like to turn with you -- well, let's start
7 with this. We talked a little bit with Mr. Isaacson about
8 the two plaintiffs in this case, Oracle America and Oracle
9 International Corp. Right?

10 A. Yes.

11 Q. And if we call them OA and OIC, will that work for
12 you?

13 A. Yes, you can call them that. I'm probably going to
14 end up calling them the name just because that's how I've
15 been referring to them.

16 Q. I learned OA. You learned Oracle America. We'll
17 sort it out. I just don't want to confuse the jury.

18 Oracle America -- I'll try. That company has
19 the actual contract with the customers in this case;
20 correct?

21 A. That's the company that's providing support
22 services.

23 Q. Right. And they're the ones that are losing the
24 profits from the support services if that customer leaves
25 to go to Rimini or someplace else; correct?

1 A. Well, not the only company that's harmed by that.

2 Q. In the first instance, they're losing the money.

3 A. They're losing their ability to provide support
4 services to that customer, but Oracle International
5 Corporation is also losing money.

6 Q. Right. But, in the first instance, OIC, Oracle
7 International, doesn't get money either; correct?

8 A. I don't know if that's correct, but in this
9 particular calculation, that's how the math is working out.

10 Q. And Oracle America does not own the copyrights in
11 this case; correct?

12 A. They license them, that's correct.

13 Q. From Oracle International; correct?

14 A. That's correct. Oracle International is the
15 copyright owner.

16 Q. And to be clear, Oracle America is not making a
17 copyright infringement claim in this case; correct?

18 A. I think you may be asking me a legal question?

19 Q. All right. Then I'll withdraw that question.

20 To be clear, you're not calculating damages for
21 copyright infringement for Oracle America in this case;
22 correct?

23 A. That's right. They're only Oracle International
24 Corporation damages.

25 Q. And then Oracle International Corp is the company

1 that actually owns the copyrights that we're here about
2 today; correct?

3 A. Yes.

4 Q. And Oracle International Corporation does not have a
5 contractual business relationship with the customers;
6 correct?

7 A. I think you might be asking me a legal question.
8 I'm not sure I know the answer to that.

9 Q. Okay. They don't provide services to customers;
10 correct?

11 A. For these particular customers, no, they don't.

12 Q. Right. So they don't provide the service and the
13 customer pays them direct, it comes through Oracle America;
14 correct?

15 A. That's how the money flows, yes.

16 Q. I think that's what you described earlier; right?

17 A. That's how the money flows, yes.

18 Q. Now, let me ask you a question. Had Rimini Street
19 not infringed, would there be any interference damages in
20 this case, Ms. Dean?

21 A. Well, I think Rimini's misrepresentations is a
22 separate claim. So I think if Rimini could make
23 misrepresentations and create a business that could have
24 convinced these customers to take support from them, then
25 there likely would be a claim.

1 Q. And all the misrepresentations were about the
2 copyright infringement; correct?

3 A. I don't think that's correct.

4 Q. Now, you've calculated lost profits for both Oracle
5 America and Oracle International Corp; correct?

6 A. Yes.

7 Q. And you agree that Oracle's actual damages relating
8 to Oracle's copyright infringement claim may be measured as
9 lost profits or, based on the facts of this case, a more
10 appropriate measure of damages may be Rimini Street's value
11 of use of the copyrighted software and support materials;
12 correct?

13 A. It may be.

14 Q. But you calculated damages in this case for JDE,
15 PeopleSoft, and Siebel based on lost profits and not value
16 of use; correct?

17 A. That is not entirely correct.

18 Q. Well, that's what you opined to the jury; correct?

19 A. That's right. The presentation to the jury was
20 about lost profits.

21 Q. Okay. And that's true even though you thought that
22 the value of Rimini's use was a more complete remedy for
23 Oracle in this case; correct?

24 A. I believe in my report I say it may be a more
25 complete remedy.

1 Q. Now, let's look, if you would, please, at -- and I
2 don't have the number on it. It's the but-for slide,
3 please.

4 You recall this in your -- I'm sorry. Yeah,
5 that will be the best -- if you've got it in your notebook,
6 that's the best place to look at it or on the screen.
7 Either place. Whatever you're more comfortable with.

8 This is -- and I don't have the numbers on my
9 slide, so if you want to take a moment to find it, that's
10 fine.

11 You talked here about Oracle lost profits on
12 lost support customers, the measurement. This is your
13 basic calculation; right?

14 A. That's right.

15 Q. And I want to focus in on one phrase that you used
16 that I want to make sure I'm clear on. But for. You see
17 that?

18 A. Yes.

19 Q. In completing your work in this case, what
20 definition of "but for" did you use, Ms. Dean?

21 A. Well, the purpose of the analysis is to determine
22 what Oracle's business would have looked like but for
23 Rimini's actions. So that's what I did.

24 Q. So how would Oracle have looked if Rimini hadn't
25 done what Oracle complains about in this case; correct?

1 A. That's correct.

2 Q. All right. Thank you.

3 Now, I want to talk for just a moment about
4 automated downloads, I haven't seen you here every day.
5 Were you here -- I think you were here during Mr. Hick's
6 testimony?

7 A. I was.

8 Q. Okay. Let's look just briefly at some of his
9 testimony just so we can kind of frame -- I'm going to talk
10 about automated downloads for a minute.

11 Do you remember -- let's look at 1194, 11 to 15.

12 Do you remember when Mr. Hicks was asked, "is it
13 correct that you have no evidence that Rimini Street was
14 running its knowledge base scan program other than in those
15 three months?"

16 And he answered, "I think that's right.
17 November through end of January. I believe that's correct,
18 yes."

19 Do you recall him giving that testimony?

20 A. Yes.

21 Q. And you recall that the years he was referring to
22 were November of 2008 through January of 2009; correct?

23 A. I believe that's correct.

24 Q. Those three months; correct?

25 A. Yes.

1 Q. Okay. And then you recall that it went on, at 1194,
2 16 through 23, the question was asked, "I'd like to make
3 one thing clear. You are not -- you don't have the opinion
4 that Rimini caused physical harm to Oracle's servers; is
5 that right?"

6 And he said, "I don't."

7 Do you recall that testimony?

8 A. Yes.

9 Q. And then on that same day Mr. Renshaw testified.
10 Let's look at 1128, 8 to 10. Do recall Mr. Renshaw, he had
11 the lovely British accent?

12 A. I'm not sure, I didn't see Mr. Renshaw in person.

13 Q. Oh, you missed him. Okay.

14 Let's look at 1211, 8-10 -- do have that?

15 A. I'm sorry. Is that an exhibit I'm supposed to be
16 looking for?

17 Q. No, she's going to get it up on the screen in just a
18 moment. We're looking at the trial transcript. I can do
19 many things, but I can't get it in the notebook that fast.

20 And they asked Mr. Renshaw, Mr. Dykal, my
21 colleague, asked Mr. Renshaw, "Got it. And for how long
22 was the system unavailable to anybody who wanted to access
23 it?"

24 Actually, I don't think it was Mr. Dykal, I
25 think it was Ms. Dunn.

1 But, in any event, the question was asked, "And
2 for how long was the system unavailable to anybody who
3 wanted to access it?"

4 And he said, "So probably about four and a half
5 hours."

6 Do you recall that?

7 Well, you've not seen that testimony, but we'll
8 recall it.

9 And then he went on at 1219 4-7, line 4, and
10 then the question was asked, "Just to clarify, there was no
11 permanent damage done to Oracle's servers by Rimini Street;
12 correct?"

13 And the answer, "There was no physical damage to
14 the servers."

15 You didn't see that, but now you've seen it.

16 Let me ask you a few questions.

17 In your analysis of the damages in this case,
18 you did not find that any customer left Oracle and went to
19 Rimini because Oracle's computer crashed; isn't that
20 correct?

21 A. That was not an analysis I did.

22 Q. You didn't do that? So you don't have any opinion
23 on that?

24 A. No.

25 Q. You didn't talk to any customer that left or got

1 unhappy or anything like that; correct?

2 A. Are you talking about because of the --

3 Q. Because of the crash. Because of the crash.

4 Excuse me. I apologize.

5 You didn't talk to any customer that left
6 because the computer crashed; correct?

7 A. That's correct.

8 Q. All right. Now, reflecting on the testimony you
9 just gave, you said Oracle seeks \$27,000 in investigation
10 costs; correct?

11 A. That's correct.

12 Q. And Oracle seeks between 14.4 million and
13 34.9 million in lost profits because the computer crashed
14 because of the downloads; correct?

15 Well, let me ask you this. Is it downloads or
16 the computer crash?

17 A. I don't think that's entirely correct.

18 Q. All right. Well, that's what I want to get clear.

19 You said they lost between 14.4 and
20 34.9 million?

21 A. For the computer fraud claim, that's correct.

22 Q. Okay. What do you understand the computer fraud
23 claim to be?

24 A. My understanding is that their -- the allegation is
25 that Rimini used automated tools to massively download from

1 Oracle's servers and caused harms.

2 Q. And the three months that Mr. Hicks and Mr. Renshaw
3 testified about were November of 2008 through January of
4 2009. Correct?

5 A. Yes.

6 Q. Okay. Now, if you would look for me, I don't have
7 it for a slide, and we can switch if you want, but if you
8 would look for me at the bar chart that you have in your
9 notebook that you went through with Mr. Isaacson just a few
10 moments ago, slide 18.

11 Now, as I understand this --

12 MR. STRAND: Is there any way we can switch back
13 to Matt so we don't leave the jury behind?

14 Your Honor, if we could switch back.

15 Could you put up the bar chart slide?

16 Oh, she's going to switch. Okay. Thank you
17 very much.

18 BY MR. STRAND:

19 Q. Now, you'll agree with me the red line represents
20 Siebel clients; correct?

21 A. That's correct.

22 Q. And there could have been no way that the Siebel
23 clients that Rimini obtained in 2006, 2007, and the first
24 10 months of 2008, could have related in any way to the
25 massive downloads that were made in November, December, and

1 January of 2008, 2009; correct?

2 A. I'm not entirely sure that the massive downloads in
3 those three months are the only basis for the computer
4 fraud claim.

5 Q. You don't know when the downloads were made, do you?

6 A. That would be Mr. Hicks.

7 Q. Okay. And you don't know -- there were 11 people --
8 there were 11 customer IDs on that one slide that was in
9 the deck that you just referred to. You don't know when
10 those 11 IDs were used, do you?

11 A. I don't recall when -- if Mr. Hicks testified about
12 that.

13 Q. Okay. Now, let's talk a little bit about lost
14 profits.

15 Your opinion is that customers left Oracle and
16 became Rimini's clients because of Rimini's misconduct
17 alleged in this case; correct?

18 A. That's correct.

19 Q. And you conclude that but for Rimini's conduct,
20 applying the definition you gave, those customers would not
21 have left Oracle; correct?

22 A. With the adjustments that I made for assumed
23 attrition, yes.

24 Q. Sure. Thus, had Rimini not engaged in the
25 misconduct, you believe Rimini's customers would have

1 stayed at Oracle, continued to pay for maintenance and
2 support services provided by Oracle; correct?

3 A. For the 228 customers less the general attrition,
4 that's correct.

5 Q. Okay. Now, let's look at the slide from your deck
6 that talks about your work steps. Information reviewed.

7 MR. STRAND: Oh, we have to switch back. I
8 promise I won't do that very often.

9 BY MR. STRAND:

10 Q. You recall this slide; right?

11 A. Yes.

12 Q. All right. Now, the -- and I won't repeat all of
13 these.

14 There's one thing I noted when I looked at this
15 that isn't on there. You never spoke to any former Oracle
16 customer about the work you did in this case; is that
17 correct?

18 A. That's correct.

19 Q. You read a lot of documents; correct?

20 A. That's correct.

21 Q. And some of those related to customers; correct?

22 A. Documents and depositions, that's correct.

23 Q. And the 17 depositions that Mr. Yourdon talked about
24 this morning?

25 A. That's correct.

1 Q. Okay. But you never talked to a flesh-and-blood
2 Rimini customer, any of those 364; right?

3 A. That's correct.

4 Q. Okay. So why don't you get in front of me -- in
5 front of you your exhibit -- it's just introduced as a
6 summary Exhibit 5469.

7 MR. STRAND: I promise only one more time,
8 Dionna.

9 BY MR. STRAND:

10 Q. You remember this was just admitted into evidence?

11 A. Yes.

12 Q. All right. And there are 229 customers on there,
13 but with the deletion that you made today, there are 228
14 that count in this case; correct?

15 A. That's already adjusted for the 228.

16 Q. Okay. It's already adjusted. I'm sorry. I stand
17 corrected. 228 customers; right?

18 A. Right.

19 Q. And you didn't talk to any of them?

20 A. That's right.

21 Q. Okay. So you don't know whether that customer ever
22 spoke to Rimini Street, correct, any of those 364
23 customers?

24 A. I assume they had spoken to Rimini Street.

25 Q. But you don't know as you sit here that those folks

1 ever spoke to anybody at Rimini Street, do you?

2 A. I think it would be a reasonable conclusion given
3 that they were licensed customers and Rimini Street was
4 supporting them.

5 Q. You don't know whether the customer made its
6 decision to leave Oracle before or after speaking to Rimini
7 Street, do you?

8 A. Well, for the 17 customers, they clearly left due to
9 Rimini Street and price. So I don't have specific evidence
10 on the other 200 and -- whatever that would be.

11 Q. 228 less 17? I hesitate to get into a mathematical
12 battle with a CPA so I'll just leave it at that.

13 The 17 that you're referring to are the folks
14 that you read their depositions; right?

15 A. That's correct.

16 Q. And it was your conclusion reading those depositions
17 they made the decision to leave Oracle after speaking to
18 Rimini; is that correct?

19 A. Well, they would need a vendor to go to, so it's my
20 understanding that they made the decision to leave to go to
21 Rimini after they knew about Rimini.

22 Q. Well, let me ask you about that. Pitney Bowes was
23 mentioned earlier this morning in Mr. Yourdon's testimony.
24 Do you recall that?

25 A. Yes.

1 Q. And as I understand it, Pitney Bowes made the
2 decision to leave to do self-support for a year before
3 going to Rimini. Do you recall that testimony?

4 A. I do recall that.

5 Q. So it's pretty clear that probably Pitney Bowes did
6 not talk to Rimini before leaving Oracle; correct?

7 A. It is correct.

8 Q. Okay. And you don't know how many of the rest of
9 these 228 customers likewise talked to Oracle -- excuse me,
10 talked to Rimini after deciding to leave Oracle, do you?

11 A. I don't know. The -- in the case of Pitney Bowes,
12 the damages wouldn't start until they went to Rimini
13 though.

14 Q. You don't know what the customer said to Rimini in
15 the course of any conversation that they have -- had, do
16 you?

17 A. That's right, I haven't seen any evidence about that
18 in this case.

19 Q. And you don't know what questions the customers
20 asked Rimini, do you?

21 A. I depend on Ed Yourdon, for example, his testimony
22 was pretty clear about what customers consider.

23 Q. What customers consider, but he didn't have any
24 direct evidence of what the customers asked other than the
25 17 depositions; correct?

1 A. I think that's correct.

2 Q. And you don't know as you sit here today what Rimini
3 Street said to the customers, do you?

4 A. I don't have specific communication, but, of course,
5 we listened to the testimony of Mr. Maddock who talked
6 about what Rimini's frequently asked questions responses
7 were, for example, and I saw many documents in the case
8 that had similar types of scripts like the one that was in
9 my testimony with respect to Mr. Ravin.

10 Q. But as you sit here today, you don't know what was
11 said on what day to which customer, do you?

12 A. That's correct.

13 Q. You also don't know the factors that each of those
14 228 customers considered in making their decision to leave
15 Oracle and go to Rimini, do you?

16 A. That's correct.

17 Q. And, finally, you don't know the factors that those
18 228 customers actually concluded were the deciding factors
19 in making their decision to leave Oracle and go to Rimini,
20 correct, Ms. Dean?

21 A. Yes. If you're asking about each individual
22 customer, that evidence has not been provided in this case.

23 Q. Now, look with me at Exhibit 5466, if you would,
24 please.

25 COURTROOM ADMINISTRATOR: PTX?

1 MR. STRAND: Excuse me. PTX. And we need to
2 switch back. PTX 5466. It's the 1006 summary that was
3 introduced through Mr. Allison.

4 And could you switch us?

5 And as soon as I say I won't do it again, I will
6 so I'm not going to make any promises.

7 BY MR. STRAND:

8 Q. All right. Let's look at Mr. Allison. Time flies.
9 I think it was last Monday. Friday or Monday. Were you
10 here for his testimony, Ms. Dean?

11 A. I believe some of it.

12 Q. Okay. Let's look footnote number 1 down there at
13 the bottom. Do you remember his testimony that there were
14 12 Siebel customer licenses, and he lists the names, that
15 notwithstanding a diligent search, Oracle was unable to
16 locate?

17 A. Yes.

18 Q. Okay. Now, it's correct, Ms. Dean, that you were --
19 that in your damage calculations you have calculated
20 damages for at least 10 of those customers on this page and
21 the next page of the document; correct?

22 A. I'm not sure what you mean by this page and the next
23 page of the document.

24 Q. Okay. I'm sorry. Show her page 2. Fair question.

25 Second page is JD Edwards, first page is Siebel.

1 There are 12 people listed on the first page and two listed
2 on the second page, and my question is this:

3 Looking at those two pages, you're still
4 calculating as part of your damage base damages for about
5 10 of those customers; correct?

6 A. I don't know.

7 Q. Okay. You don't know. You have no reason to
8 believe you're not doing that; correct?

9 A. Well, I could easily look.

10 Q. I know, but we won't take everybody's time to do
11 that. We'll work that out later.

12 Now, you watched customer videos, or -- did you
13 read the depositions or watch the videos or both?

14 A. I've seen some videos here in the courtroom.

15 Q. And did you read Mr. Yourdon's report?

16 A. I did.

17 Q. And you were here this morning for his testimony;
18 right?

19 A. Yes.

20 Q. Okay. I want to talk a little bit about customer
21 attrition/retention, kind of two heads of the same coin.

22 A. Okay.

23 Q. Okay. You'll agree with me that each year Oracle
24 loses some of its maintenance and support customers;
25 correct?

1 A. I'll agree with that.

2 Q. And I believe the number 95 percent, because it's
3 not absolutely precise for every product line for every
4 year, but 95 percent seems to be about the right number
5 that stay, and 5 percent leave every year; correct?

6 A. Well, I would classify it as 95 stay and 5 cancel
7 their contracts.

8 Q. Five cancel their contracts. That's fine.

9 So every year -- and you're also aware that the
10 maintenance and support agreements between Oracle and its
11 customers renew each year; correct?

12 A. In general.

13 Q. Generally speaking. About 16,000 customers --
14 14,000 customers; correct?

15 A. About 14,000. Well, I don't know.

16 Q. Okay.

17 A. Different amounts at different times.

18 Q. All right. I've heard 14,000, I've heard 10,000 for
19 PeopleSoft and JDE, but I'm trying to get -- about 5
20 percent of those cancel each year; correct?

21 A. About 5 percent of them do not support -- do not
22 renew their support, that's right.

23 Q. So every -- every year Oracle has to go out and
24 re-earn the right to continue to provide maintenance and
25 support service for those customers, correct? Because they

1 have the right to say thanks, we're done?

2 A. Well, I would imagine they're living out the whole
3 year. It's not like they just go out the last two days and
4 try to renew them.

5 But, yes, Oracle works throughout its year to
6 keep customers.

7 Q. Keep customers. But they've got to earn those
8 customers year after year after year, it's not a one-time
9 for-life kind of deal; correct?

10 A. Yeah, Oracle's customers are not locked in for
11 support.

12 Q. So there's no guarantees that those customers are
13 going to come back every year; correct?

14 A. There is no guarantee.

15 Q. Now, you did an analysis of Oracle's customer
16 retention from 2006 up to early 2014; correct?

17 A. That's correct.

18 MR. STRAND: All right. And that one has been
19 in evidence or in front of the jury. So let's pull that
20 one up, if we could, please, Marie.

21 BY MR. STRAND:

22 Q. This looks a lot like a demonstrative based upon
23 your analysis, correct, Ms. Dean?

24 A. It looks like it, yes.

25 Q. Okay. And while it says -- I thought I had your

1 reference on it. But this is the analysis that --
2 basically the results of the analysis that you did showing
3 what percentage of customers Oracle retained year over
4 year; correct?

5 A. For support renewal, yes.

6 MR. STRAND: Okay. And then we could present it
7 another way. It's been done another way. Let's look at
8 that next slide.

9 Can we darken that up, or is that all we got?

10 BY MR. STRAND:

11 Q. All right. So about 94 to 96 percent stay, and
12 about 5 to 3 percent, 6 percent, cancel their contracts
13 ever year; correct?

14 A. Is this a merge of all three products?

15 Q. It's kind of a merge of all three products so it's
16 not so busy.

17 A. Okay.

18 Q. Does that look fair to you?

19 A. I think that sounds fair.

20 Q. All right. Now, looking at this Rimini Street made
21 its first sale to a client in 2007; isn't that correct?

22 A. I think -- did they have clients in 2006? No, they
23 just announced in 2006. You're right. They don't have a
24 client until 2007.

25 Q. Correct.

1 Okay. As far as you know -- well, were you here
2 for Ms. Ransom's testimony on Tuesday?

3 A. Some of it, yes.

4 Q. All right. Let's all get on the same page. Let's
5 look at 1318 beginning at line 7.

6 I asked her, "Looking at this JD Edwards
7 attrition, this was calculated by an expert working with
8 Oracle," you didn't know you had already started in the
9 case, "JD Edwards' retention rate was from 91 percent up
10 through 96, 95 percent. Do you see that?"

11 She says, "Yes, 91 percent in 2006."

12 Then it goes on, let's just go down to the next
13 Q and A. Beginning at line 12.

14 "Has it been your experience that somewhere
15 about 95 percent of the people are retained, 95 percent of
16 the customers are retained every year going all the way
17 back to the mid-1990s?"

18 And her answer, "Yes, I would say so."

19 Do you see that?

20 A. Yes, I do.

21 Q. You don't have any reason to disagree that the
22 historical attrition rate has been in that 95 -- excuse me,
23 historical retention rate has been about in that 95 percent
24 range; correct?

25 A. That's correct, although I would say one caveat, and

1 that's the information I was provided was based on revenue,
2 not a customer count.

3 Q. Let's talk a little about that. That's a good
4 point.

5 You did your analysis on how many dollars were
6 up for renewal and how many dollars cancelled; correct?

7 A. That's right. That was Oracle's methodology.

8 Q. And that 95 percent that you come up with is the 95
9 percent of dollars that stayed rather than cancelled;
10 right?

11 A. When they were up for renewal, that's right.

12 Q. Right. So that the numbers were dollars, not
13 people.

14 A. Right.

15 Q. But on average, on average you could equate the
16 retention rate in dollars to people, couldn't you, to
17 customers?

18 A. Well, I think you would need to be careful that you
19 were -- I can understand the mathematical way that you
20 could do that, but I think you would need to be careful to
21 know what the average customer is for the amount that is
22 available to renew and the amount that chose to be cancel.

23 Q. But you testified in your deposition, didn't you,
24 Ms. Dean, that you could equate the retention rate in
25 dollars to customers?

1 A. I think you and I were discussing a hypothetical
2 circumstance where you told me to assume there were 10,000
3 customers, and couldn't I divide it, and I said yes.

4 Q. Okay. I'm going to do that now. You're ahead of
5 me. The witness is leading counsel.

6 If you have 10,000 JDE -- or, excuse me, JDE and
7 PeopleSoft customers, say just 10,000, you've heard that
8 number, I think it's in your report?

9 A. No, that was the number that was disclosed in 2005
10 when --

11 Q. When they were acquired.

12 A. -- Oracle bought PeopleSoft. But I don't know how
13 relevant that number is to any other period.

14 Q. And it's probably pretty close to that in 2006,
15 wouldn't you think?

16 A. I don't know.

17 Q. Okay. So if we take 6 percent of 10,000, how many
18 customers do we end up with?

19 A. 600.

20 Q. Or 500 if we end up with 5 percent?

21 A. Yes.

22 Q. Okay.

23 A. I'm not sure what you meant by how much do we end up
24 with, but applying the percentage against the total.

25 Q. You can agree with me that there was no year that

1 Rimini obtained so much as five or 600 PeopleSoft and JDE
2 customers; correct?

3 A. Not during the time period that I was analyzing,
4 that's correct.

5 Q. Now, just so we kind of set framework, again, you
6 talked about this with Mr. Isaacson, but the damages period
7 that you've calculated damages for begins in 2006; correct?

8 A. For any customer that left to go to Rimini in this
9 2006 which we just decided didn't happen.

10 Q. Didn't happen.

11 So we've got -- but it's 2006 to 2014 is the
12 damage period for activities that occurred between 2006 and
13 late 2011, early -- excuse me, late 2011; correct?

14 A. That's right.

15 Q. Okay. Cool.

16 Now, you can't look at any information that you
17 have available to you from Oracle and determine how many of
18 the 6 percent of PeopleSoft customers who left Oracle in
19 any given year went to Rimini; correct?

20 A. I'm not sure I'm following your question.

21 Q. Sure. Is there any information that you have that
22 you can look at and say that of the customers that left
23 Oracle in a given year, how many of the 6 percent that left
24 Oracle went to Rimini?

25 A. Well, I know how many went to Rimini because I have

1 that from Rimini's records. I don't know how Oracle would
2 necessarily know that.

3 Q. Okay. What about the rest of the 6 percent of the
4 customers, 5 or 6 percent of the customers that would leave
5 Oracle, do you have any way of knowing where they went if
6 they didn't go to Rimini?

7 A. Yes, I do.

8 Q. Did you analyze that?

9 A. Well, I saw evidence in the case with respect to
10 that. The vast majority of them don't use the software.
11 They're not going anywhere. They're cancelling support
12 because they're not using the licensed software.

13 Q. The one thing we know, though, is that all customers
14 that left Oracle in a given year did not go to Rimini;
15 correct?

16 A. They didn't go anywhere. There were -- some
17 customers went to Rimini, some customers might have gone to
18 TomorrowNow or CedarCrestone that are not acceptable
19 alternatives. But most of the customers don't go anywhere,
20 they just cancel support because they're not using the
21 software.

22 Q. I don't want to parse words with you. Not all of
23 the customers that cancel with Oracle sign a contract with
24 Rimini; correct?

25 A. I would agree with that.

1 Q. And the ones that didn't just stop using the
2 software had to do something; correct?

3 A. If there are customers that kept using the software,
4 they would have to do something.

5 Q. And the software's been described as
6 mission-critical; correct?

7 A. That's correct.

8 Q. So a big company can't just wake up one morning and
9 say "we don't want to use enterprise resource planning
10 software today so we'll just shut off the switch." They
11 can't do that; right?

12 A. That's my understanding.

13 Q. They have to make some kind of plan.

14 A. That's my understanding.

15 Q. And that's a fairly expensive and involved decision
16 process; correct?

17 A. Yes.

18 Q. And these companies that tend to use the ERP
19 software, many of them are very large and very
20 sophisticated; correct?

21 A. Yes. I would assume that customers of this would be
22 primarily large, but I've seen evidence in the record that
23 medium and even some small-sized companies may use it. It
24 depends on what type of program they're using.

25 Q. Right. And, of course, if you're a smaller company,

1 it's a significant expenditure just as well, maybe smaller
2 dollars; right?

3 A. As a proportion of the budget, I don't know. I
4 heard Ms. Ransom testify that the ERP software isn't a
5 substantial portion of an IT budget.

6 Q. Now, I want to talk a little bit about why do
7 customers go and where do they go. How about that, okay?

8 A. Okay.

9 Q. Were you here for Ms. Catz's testimony on Monday
10 afternoon?

11 A. Yes, I believe I was.

12 Q. Okay. Let's refresh our recollection a little on
13 that, 949, beginning at line 13, please. And we'll just go
14 down to 18.

15 The question was asked of Ms. Catz -- you know
16 Ms. Catz; right?

17 A. I do.

18 Q. You met with her as a part of your interview process
19 in connection with the work you did in this case; correct?

20 A. I did.

21 Q. Okay. So you know she's a CEO.

22 A. I'm aware of that.

23 Q. Okay. So she was asked, "Based on your experience
24 as CEO of Oracle, do you think that Rimini's customers
25 would have stayed with Oracle but for Rimini Street's

1 conduct?"

2 Her answer, "The vast majority of our customers
3 stay with us if they're using the software. If they go
4 bankrupt, obviously, then they go away."

5 Do you recall her testifying to that?

6 A. Yes.

7 Q. Now, look with me, if you would, please, at
8 Exhibit 161, DTX 161. This was admitted during
9 Ms. Ransom's testimony.

10 Do you have that in front of you?

11 A. I do.

12 Q. That's up on the board now in front of us.

13 I believe if I -- well, in your expert report,
14 let's go back there for a moment, you were kind enough to
15 provide a list of documents that you had considered in
16 connection with your work in this case; correct?

17 A. Yes, that's correct.

18 Q. And you considered a lot of documents; right?

19 A. That's right.

20 Q. All right. And as I recall looking at your exhibit
21 to your report, and I've got it back here if you want to
22 look at it, it's way at the back, schedule 3, you -- you
23 received Exhibit DTX 161 from Oracle; correct?

24 A. I'm not sure, but I would -- I would say yes because
25 I received all the depositions, and I can see there's a

1 stamp. This was definitely shown to a couple of deponents.

2 Q. Okay. So you considered this then as a part of your
3 analysis of damages in this case; is that correct?

4 A. Yes.

5 Q. And it wasn't cited in your report, you didn't feel
6 it was important enough to cite in your report apparently;
7 correct?

8 A. If you're representing to me it wasn't cited in my
9 report, I can understand that, but the report is 190 pages
10 long so I don't recall.

11 Q. Okay. Fair enough. About 400 footnotes?

12 A. That's correct.

13 Q. Okay. Let's look at Defendants' Exhibit -- DTX 161,
14 if we could, please. Look with me at page 6 or slide 6 of
15 that exhibit.

16 Do you recall looking at this as a part of your
17 analysis, that list of true cancellation types?

18 A. Not specifically, but this is not dissimilar to
19 other information that I looked at.

20 Q. And I'm not going to go down all these. But this
21 gives -- based upon all the documents that you looked at in
22 this case, this gives us a sense of all the various reasons
23 why Oracle customers might say they cancelled their Oracle
24 maintenance and support service; correct?

25 A. I suppose it could fall under no customer response,

1 but I seem to recall a lot of documents which just say
2 "unknown" at the bottom.

3 Q. Sure. Kind of miscellaneous. We don't know why
4 they cancelled their service.

5 A. That's right. These cancellations depend on
6 communications from the customers. So they may not have
7 any idea.

8 Q. There's bankruptcy. Why don't we highlight that.
9 Right in the middle, that Ms. Catz mentioned, if they went
10 bankrupt, obviously they cancel; right?

11 A. I would assume so. I don't know. Could be the
12 reason.

13 Q. Yeah let's look at slide 9 of that document if we
14 could, please.

15 We had some conversation -- I had some
16 conversation with Ms. Ransom about this. Were you here for
17 that?

18 A. I think so.

19 Q. And the NA column over there, three over from the
20 right, see that, that's North America, that's the one we're
21 focused on; right?

22 A. That's right.

23 Q. And the bankruptcy percentage in North America at
24 the time of this document which was in September of 2008
25 was how much?

1 A. This document shows 2.69 percent.

2 Q. Let's look at Move to Support Competitor, up there
3 second from the top. Do you see that?

4 A. I do.

5 Q. And what's the percentage that moved to a support
6 competitor?

7 A. This is listed at 12.38 percent.

8 Q. Right. Let's look at DTX 164, which was also a
9 Ransom deposition exhibit and something we talked about
10 with Ms. Ransom on whatever day we talked to Ms. Ransom on
11 that first page.

12 Look down at the bottom. You'll see the exhibit
13 sticker. So you know from that that you received this
14 document and you considered it as part of your analysis of
15 damages' in this case; correct?

16 A. That's correct.

17 Q. All right. Let's look at slide 4 of that document,
18 if you would, please, ma'am. Do you have that in front of
19 you?

20 A. I do.

21 Q. And I apologize for the quality of the reproduction
22 of it, but it's about 4 or 5 generations old.

23 You see up there there's Q2 2009 on the
24 left-hand side?

25 A. I see that.

1 Q. And looking down on the Q2 cancellation status code,
2 do you see what the percentage of bankruptcies was, people
3 who said they cancelled because of bankruptcy?

4 A. It says 1 percent.

5 Q. And looking over there at the -- or looking down at
6 the slice of pie that's at the bottom, it's very dark, can
7 you see how many moved to a support competitor?

8 A. It says 9 percent.

9 Q. Okay. And then let's look at Q3 '09 cancellation
10 status code. What's the percentage of bankruptcies?

11 A. It says 1 percent.

12 Q. And what's the percentage that moved to support
13 competitors?

14 A. It says 10 percent.

15 Q. So if we look at -- let's put up the next slide.
16 This is a graphic that appeared in my colleague's opening
17 statement.

18 Can you put that up? Thanks.

19 So of the customers that leave -- that cancel --
20 they're getting me squared away -- their contracts with
21 Oracle, about 88 percent choose other options, and we've
22 just looked at what some of those options are, correct?

23 A. Well, I think all we've done is look at the
24 bankruptcy option. All of these pies have a lot of other
25 considerations.

1 Q. Right. And I'm trying to get done today. I don't
2 know if we're going to make it or not.

3 But we can look around those and see what the
4 other options were; correct?

5 A. That's right.

6 Q. And about 12 percent, 10 or 12 percent, appear to go
7 to Rimini or someplace else for a third-party service
8 provider; correct?

9 A. Well, I think that -- my review of these documents
10 and one reason that I don't deal with them in my analysis
11 is because those customers are primarily going to
12 TomorrowNow.

13 Q. Even as late as 2009?

14 A. They close in the October of '08, but fiscal year
15 '09 starts in '08.

16 Q. So I believe that -- and the record will be clear, I
17 believe they were closed in the summer of 2008, and it's
18 your testimony they were continuing to go to TomorrowNow
19 after TomorrowNow was closed?

20 MR. ISAACSON: Your Honor, objection, the record
21 is actually October 2008.

22 MR. STRAND: October. That's correct. I was
23 going to get that slide.

24 BY MR. STRAND:

25 Q. So your testimony is they continued to go to

1 TomorrowNow up until the last moment, October of 2008?

2 A. Well, I know that TomorrowNow had a lot of customers
3 and that customers were going with them because -- I don't
4 know if I can say this or not.

5 Q. Okay.

6 A. Probably not.

7 Q. Okay. Now, you'll agree with me that customers
8 decided to cancel their maintenance and support agreements
9 with Oracle for a variety of reasons; correct?

10 A. I would agree with that.

11 Q. Let's look at what Ms. Ransom told us on -- when she
12 testified, 1339, 19 through 21, please.

13 She said, "At the end of the day, each customer
14 that leaves Oracle leaves for a different reason; correct?"

15 And she said, "Yes."

16 Do you agree with that?

17 A. Well, I doubt they all leave for completely
18 independent reasons. I mean, you can make the pie chart.
19 There's about six reasons.

20 But I think the accumulation of evidence that
21 I've seen in the case is they stop renewing support
22 primarily, and you could add up a lot of these pies for
23 this position, which is they are not using the software.

24 Either they never implemented it to begin with,
25 they've decided to transition off, they were bought by a

1 bigger company that uses a different software, or they were
2 swept into that company's licensing, they went bankrupt.

3 The primary reason fundamentally that people
4 don't renew support with Oracle Corporation is because
5 they're not using Oracle's software.

6 Q. All right. So you heard Ms. Ransom testify that she
7 joined JDE in 1993; correct?

8 A. Yes.

9 Q. And she went through the acquisition by PeopleSoft;
10 correct?

11 A. That's my understanding, yes.

12 Q. And then she went through the acquisition by Oracle
13 International Corporation; correct?

14 A. That's my understanding, correct.

15 Q. And she's now a senior vice-president; correct?

16 A. Yes.

17 Q. And she said that at the end of the day, each
18 customer that leaves Oracle leaves for a different reason.
19 You don't have any reason to disagree with her about that,
20 do you?

21 A. Well, what I said I didn't think was inconsistent
22 with her testimony either.

23 Q. She just said yes, though; correct?

24 A. That's right.

25 Q. Now, not all customers who left Oracle were fully

1 satisfied with -- who cancelled their Oracle support, were
2 not satisfied with Oracle; correct?

3 A. That's a very summary statement. I don't know if I
4 can agree or disagree with that.

5 Q. All right. And I've learned that from talking to
6 you before, so let's look at a document so we get it
7 straight. Let's look at DTX 165 if we could, please.

8 This is a document, again, it's -- do you have
9 it in front of you? Okay.

10 This is a document that was marked and talked
11 about in a deposition, it looks like Ms. Ransom's
12 deposition, and, again, based on that, you know you
13 received this and considered it as a part of your analysis
14 in reaching your opinions on damages in this case; correct?

15 A. Yes.

16 Q. Let's look at tab -- excuse me, slide 26 in that
17 document if we could, please, and I won't go into this in
18 detail.

19 You recall Ms. Ransom and I discussed
20 improvement and the summary there?

21 I'm sorry. I'll let you get there.

22 A. I generally recall you two talking about this.

23 Q. Yeah, and this was a document dated August of 2007;
24 right?

25 A. That's correct.

1 Q. And Oracle was talking internally about areas for
2 improvement; correct?

3 A. Yeah. I would imagine Oracle was always trying to
4 improve.

5 Q. And the second bullet point says -- or the first
6 bullet point says, "Customers are more likely to comment
7 about the analyst than anything else."

8 Do you see that?

9 A. I see that.

10 Q. And the second bullet point says, "The analyst
11 handling and time to solution are the three main areas
12 customers want to see improve"; correct?

13 A. That's what this says.

14 Q. And then let's look at DTX 160 which was admitted
15 during Ms. Ransom's testimony, defense Trial Exhibit 160,
16 Ms. Dean.

17 That's another one it looks like it was a
18 document marked as an exhibit, so you looked at that and
19 considered it as a part of your work in this case; correct?

20 A. Correct.

21 Q. Look at slide 3 for me.

22 Up there at the top it says, "JD Edwards E1
23 customers are showing consistently low levels of
24 satisfaction with Oracle products and services."

25 Do you see that?

1 A. I see it says that.

2 Q. Did I read that correctly?

3 A. I see it says that.

4 Q. Did I read it correctly?

5 A. Oh, I'm sorry. Yes, you read it correctly.

6 Q. Okay. Sorry to get out of sync.

7 Let's look at page -- at tab 5 of that exhibit
8 if we can, please.

9 One more page, please.

10 There we have Key Target Areas to Improve there
11 toward the bottom. Do you see that?

12 Ease of System Administration, Ease of Product
13 Installation, do you see all those?

14 A. I do.

15 Q. And then there are lines for PeopleSoft and E1 and
16 then Siebel there. Do you see those?

17 A. I do.

18 Q. And the black numbers indicate above 50 percent, it
19 looks like, and the -- well, I'm not sure I know the
20 number -- what the black and white mean, but they've got
21 percentages in each one; correct?

22 A. The squares seem to have percentages in them.

23 Q. Percentages.

24 Now, and you considered this in forming your
25 conclusion that but for Rimini's conduct, the Oracle

1 customers would not have cancelled their contracts with
2 Oracle and would have stayed with Oracle and paid for
3 Oracle maintenance and support; correct?

4 A. I think I need to hear that question back again.

5 Q. I think I'll ask her to read it again.

6 Well, would you like me to break it up?

7 A. Sure.

8 Q. That saves you.

9 You reviewed this document and the other
10 documents we're looking at; right?

11 A. That's correct.

12 Q. As a part of reaching your conclusion that but for
13 the misconduct that Rimini allegedly engaged in in this
14 case, the Oracle customers would have stayed at Oracle and
15 paid Oracle for maintenance and support; correct?

16 A. I think what you're asking is did I review it, and
17 the answer is yes.

18 Q. And it didn't -- it figured in your opinion?

19 A. I don't know what you mean by figured in my opinion.
20 Would you like to know what I think about the document?

21 Q. Excuse me. Go ahead.

22 A. Would you like to know what I think about this kind
23 of information?

24 Q. We'll move forward. Your counsel will ask, I'm
25 sure, if he thinks it's important.

1 A. Okay.

2 Q. Let's look at slide 11 in that same deck if we
3 could, please, DTX 160.

4 MR. STRAND: Did I make you go backwards? No.
5 Okay. Slide 11. Don't worry about it. I'll just work it
6 with her. Oh, you got it.

7 BY MR. STRAND:

8 Q. Let's look at -- this is called Root Cause Analysis.
9 Do you see that?

10 A. I see those words.

11 Q. Down at the bottom, let's read the bottom bullet
12 point. It says, "Use of Oracle support system is weak and
13 customer voice is typically through user groups and
14 partners."

15 Do you see that?

16 A. I do.

17 Q. Okay. That also appeared in this document that you
18 considered; correct?

19 A. Yes, it also appears in this document.

20 Q. All right. Now, you talked -- we talked a little
21 bit about you reviewing the depositions taken of the 17
22 customers in this case.

23 Let me highlight excerpts that were shown in the
24 opening statement and either have been or will be shown, I
25 believe they will be shown, coming up?

1 Let's go to the next slide.

2 Do you recall looking at or reading Mr. Brian
3 Baggett's deposition?

4 A. Yes.

5 Q. And he was the IT person at Bausch and Lomb, right?

6 A. He was.

7 Q. And they're the people that make the contact lens
8 solution and stuff like that, right?

9 A. That's my understanding.

10 Q. And he was asked, "And you -- but you ultimately
11 didn't keep support with HCM with Oracle; is that correct?"

12 Now, let me pause there. HCM, that's a
13 PeopleSoft product?

14 A. Right. That's Human Capital Management.

15 Q. All right. And he says, "That's correct."

16 And the question was asked, "And what led" -- I
17 think it's led, not let, but, "What led to that decision?"

18 He said, "We felt Oracle was unreasonable."

19 Do you recall reading that in his deposition?

20 A. Yes.

21 Q. And then he went on, "Unreasonable. Can you
22 describe?"

23 And his answer, "In every aspect of the
24 negotiation."

25 Let's look at Mr. Baggett's, the next slide of

1 his testimony.

2 Mr. Baggett was also asked that, "In terms of
3 other products in the future, is Oracle considered a viable
4 support option?"

5 And his answer, "My personal opinion, and
6 speaking on behalf of the recommendations that I made with
7 Bausch and Lomb, they're our last choice."

8 Did I read that correctly?

9 A. You read that correctly.

10 Q. And you considered the testimony of Mr. Baggett in
11 reaching your opinions in this case; correct?

12 A. Yes.

13 Q. Let's look at the next slide that appeared in the
14 opening statement and that the jury will be seeing the
15 video here next week.

16 Mr. Clark Strong of the Birdville Independent
17 School District, do you recall reading his deposition?
18 He's one of the 17, right?

19 A. Yes, he is.

20 Q. And he was asked, "And to what extent was that lower
21 price a deciding factor in the decision for Birdville to
22 contract with Rimini Street rather than renew with Oracle?"

23 His answer, "None."

24 "The price was no -- no -- no effect
25 whatsoever?"

1 "ANSWER: No."

2 "So if it had been the same price, you still
3 would have contracted with Rimini Street?"

4 "ANSWER: That's what I would have recommended."

5 Do you recall reading that?

6 A. Yes.

7 Q. So the price wasn't the only reason that people
8 decided to cancel their contract with Oracle and contract
9 with Rimini Street; correct?

10 A. Yes.

11 And that's not my opinion. I have the same
12 opinion Mr. Yourdon does, that it was the combination of
13 the cheaper price with the guaranteed vendor-level
14 replacement support.

15 Q. All right. And we'll talk about that in just a
16 moment.

17 Let's go to the next page.

18 And then he was further asked, "As we sit here
19 today, does Birdville have any plans to go back to Oracle
20 support?"

21 "ANSWER: I wouldn't recommend it.

22 "QUESTION: And why not?

23 "Because of the support we get from Rimini
24 Street."

25 Do you recall reading that?

1 A. Yes.

2 Q. Now, there's a bigger binder up there, don't put it
3 on the screen, there's a bigger binder up there called
4 Exhibit 154B. Yeah, it's got a bunch -- it's got big long
5 spreadsheet kind of pages.

6 A. Okay.

7 Q. I'll represent to you, ma'am, that Exhibit 154B was
8 marked as an exhibit in Ms. Catz's deposition, so I believe
9 that you -- and it's also referenced on Exhibit 3 to your
10 report, the Catz deposition and all exhibits.

11 Do you recall reviewing Exhibit 154B as a part
12 of your work in this case?

13 A. I may have seen it.

14 Q. And you received that from Oracle; correct?

15 A. If it was included in Ms. Catz's deposition.

16 Q. And you reviewed that document as a part of your
17 work in this case?

18 A. I'm not sure necessarily that I would have reviewed
19 it because it doesn't really have anything on it.

20 Q. It doesn't have anything on it?

21 A. Well, there's no title, no indication of what it is
22 at all.

23 Q. Okay. Take a moment and refresh your recollection
24 and look at it and so if you can recall -- well, let me ask
25 you this.

1 Did you personally review every single document
2 that you were given in this case, or did your two
3 assistants that -- or the two people, MBA and -- do they
4 review documents as well?

5 A. People on my team would have reviewed documents as
6 well.

7 Q. So either you or one of the people on your team
8 would have reviewed this document?

9 A. If it was an exhibit to Ms. Catz's deposition, yes.

10 Q. And it would have been somehow factored away, high
11 or low, in reaching your conclusion about causation in this
12 case; correct?

13 A. Well, we don't necessarily factor everything, but my
14 guess is just looking at it, that it probably would have
15 been -- if it was considered, of low value --

16 Q. Low value.

17 A. -- since it's not clear what it is.

18 Q. Yeah, because factoring something and saying it's
19 not worth anything is still factoring it; right?

20 A. That's true.

21 Q. All right. Let's go to the next slide.

22 Do you recall this is a slide from the deck that
23 you and Mr. Isaacson just talked through in your direct
24 examination?

25 A. Yes.

1 Q. And this is a Mr. Hintz or Hintz from Hastings
2 Entertainment. Do you recall that?

3 A. Yes.

4 Q. And you read his deposition; correct?

5 A. Yes.

6 Q. All right. Look with me at the pulled-out or tabbed
7 portion of DTX 154B. Do you see a reference there to --

8 A. I'm sorry. There are a few tabs here. There are
9 two.

10 Q. There are three tabs, one of them -- three blue
11 tabs. One of them relates to Hastings.

12 A. Is this like one document?

13 Q. Do you have that in front of you?

14 A. Yeah, it's a little hard because the titles are on
15 one page --

16 Q. Okay.

17 A. -- the information is on another.

18 Q. And I apologize. We were given it in native format
19 and I just printed it out, and that proves I'm not a
20 spreadsheet expert.

21 MR. STRAND: Your Honor, it might be appropriate
22 to approach the bench right now before I ask my next
23 question.

24 THE COURT: All right.

25 (Sidebar conference held as follows:)

1 THE COURT: Go ahead.

2 MR. STRAND: This is the one redaction that I
3 indicated to Your Honor I might be getting to during the
4 course of her cross-examination.

5 What I propose to do at this time is ask the
6 following two questions:

7 Is it your opinion that Hastings left Oracle due
8 to the misconduct of Rimini?

9 And her opinion will be yes because she's
10 already stated that.

11 Then I will ask the following question: Did you
12 consider the following entry in PTX 154B in reaching your
13 opinions in this case, and I will read her the portions of
14 the entry of 154B that has -- that I've highlighted for the
15 Court.

16 MR. ISAACSON: I don't think he should be able
17 to read what it says.

18 MR. HIXSON: It's inadmissible hearsay. There's
19 a statement here about the customer advised --

20 THE COURT REPORTER: Who's speaking?

21 THE COURT: This is Mr. Hixson speaking.

22 MR. HIXSON: There are two statements here. One
23 is about what the customer advised the Oracle employee, and
24 it goes on to state that.

25 And another line is about what the customer

1 stated, and those are recorded here, but these are clearly
2 customer statements, it's third-party hearsay, and we
3 object to reading it into the record in that fashion.

4 MR. STRAND: I offer it, your Honor, pursuant in
5 cross-examination because it is one of the documents she
6 considered.

7 I offer it pursuant to Rule 703B -- excuse me,
8 703, Rule of Evidence 703,

9 "But if the facts or data would otherwise be
10 inadmissible, the proponent of the opinion may disclose
11 them to the jury only if their probative value in helping
12 the jury evaluate the opinion substantially outweighs their
13 prejudicial effect."

14 And I would also refer the Court to the advisory
15 committee notes that says that,

16 "Nothing in this rule restricts the presentation
17 of the underlying expert facts or data when offered by an
18 adverse party."

19 So I offer this under Rule 703 without regard to
20 whether it's hearsay, but to cross-examine this expert
21 based upon the bases for her opinion that she's just
22 rendered in this case.

23 MR. ISAACSON: If I may, there's no foundation
24 that within this enormous document that this one panel here
25 had anything to do with her report.

1 I mean -- he's gotten from her that she or
2 someone may have looked at this because it was in the Catz
3 deposition. That's it.

4 MR. STRAND: Your Honor, she went on in her
5 opening -- in her direct -

6 THE COURT: I don't need further argument.

7 This is cross-examination. I think you're
8 entitled to ask it.

9 It may be hearsay, but she's at least indicated
10 that it may have been information she considered. I think
11 you need to establish that first before you ask further
12 questions, and if it's not something she considered, I
13 don't think you should go into it.

14 MR. ISAACSON: Okay. And should he establish
15 that, I would ask for a limiting instruction telling the
16 jury that this is hearsay and not to be considered for the
17 truth.

18 MR. GRAY: Actually, your Honor --

19 THE COURT: Wait a minute. I'm only going to
20 hear from two attorneys here.

21 MR. STRAND: We're fine.

22 THE COURT: All right.

23 (Sidebar conference concluded.)

24 MR. STRAND: Thanks for your patience.

25

1 BY MR. STRAND:

2 Q. We were looking at 154B, that large spreadsheet
3 exhibit. It was an exhibit -- it was an exhibit to the
4 Catz deposition. So would you look with me at the back of
5 the other exhibit volume I've got in front of you,
6 Ms. Dean, the white one.

7 A. Do you want me to put this away?

8 Q. No. Leave it right there. We're going to talk
9 about a couple other things first and then we're going to
10 get back to that.

11 A. Okay.

12 Q. Way at the back of that white volume there's
13 something that says Supplemental Schedules. And if you
14 would look with me at schedule 3 which is actually not a
15 supplemental schedule, it's a schedule to your original
16 report.

17 Do you recognize schedule 3 to your original
18 report, ma'am?

19 A. This is an excerpt from it. But, yes.

20 Q. Okay. And there -- yeah. It -- the first portion
21 of it are all the depositions you looked at; correct?

22 A. Right. It appears to be.

23 Q. And your testimony has been that you reviewed those
24 depositions as a part of -- as a part of your work in this
25 case; correct?

1 A. That's correct.

2 Q. And you reviewed all of the exhibits to those
3 depositions as a part of your work in this case; correct?

4 A. Yes, if the entry says "and exhibits."

5 Q. And I'll -- if you look there, deposition of Safra
6 Catz, taken on December 14th, 2011?

7 A. I see that.

8 Q. And exhibits?

9 A. Yes.

10 Q. I'll represent to you, Ms. Dean, that what we've
11 marked as Defendants' Exhibits 154B was an exhibit to
12 Ms. Catz's deposition.

13 A. Okay.

14 Q. If -- that is the case. So either you or a member
15 of your team would have reviewed Exhibit 154B; correct?

16 A. At least in some fashion. It might have depended on
17 what the deponent said about the document.

18 Q. Right. And you may have concluded it was worthwhile
19 or not worth much; correct?

20 A. That's correct.

21 Q. But you considered it nonetheless; correct?

22 A. Well, generally. I mean, if -- there are times when
23 in a deposition a witness is shown a document and doesn't
24 know anything about it, so in those cases a lot of times I
25 won't look at it.

1 Q. Is it your opinion that Hastings Entertainment, the
2 slide we were just looking at, cancelled its contract with
3 Oracle due to the misconduct of Rimini?

4 A. I think they cancelled their contract to go to
5 Rimini, and the way Rimini was able to offer the service
6 that they offered was as a result of the misconduct.

7 MR. STRAND: Your Honor, I would now like to
8 read that one provision.

9 MR. ISAACSON: I don't think there's any
10 foundation for the provision.

11 THE COURT: You can ask her if she read that and
12 took it into consideration.

13 BY MR. STRAND:

14 Q. Did you -- if you -- when you received that
15 document, would you or a member of your staff have read the
16 entire document?

17 A. I'm sorry. What document are we referring to?

18 Q. Excuse me. Defendants' Exhibit 154B.

19 A. I don't know. I doubt it.

20 Q. All right. Knowing that Hastings was a customer of
21 Rimini, would that have focused your attention on that
22 particular entry?

23 A. I wasn't even aware there was an entry for Hastings.
24 If you're representing there was --

25 Q. So your testimony is you did not consider the entry

1 of Hastings.

2 A. Not that I recall.

3 MR. STRAND: Your Honor, I offer to read the
4 entry based upon the fact that she didn't read it.

5 THE COURT: I'll allow you to read the entry.

6 Ladies and gentlemen, I've reviewed it. This
7 is -- he's entitled to question if she considered this
8 entry in the course of reaching her opinions, and he may
9 read it.

10 BY MR. STRAND:

11 Q. Okay. I'd like to read the entry there in front of
12 you, Ms. Dean.

13 A. I'm sorry. Can you just tell me where it is in this
14 big book?

15 Q. Oh, absolutely. Yeah, I can't come up and help.

16 A. So it was --

17 Q. To make sure we're all on the same page literally,
18 it says Hastings Entertainment, Incorporated. Do you see
19 that?

20 A. I do.

21 Q. Okay. And then there's a column over there in the
22 middle with comments. Do you see that?

23 A. Let me just check and see. It says Original Notes
24 on the front page.

25 Q. And I'm going to ask you -- I'm going to read -- I'm

1 going to ask you did you consider the following entry in
2 reaching your opinions in this case. Okay? I'm going to
3 read the sentence that begins about seven lines down, 2-20
4 colon. Do you see that?

5 A. Yes.

6 Q. It says,

7 "2-20: Customer advised ASN Pam Riley that they
8 have already selected another support vendor."

9 And then I'm going to go down to 12-28 which
10 apparently precedes that date, and it reads,

11 "Customer stated primary reason for dropping
12 support as being that their software releases will no
13 longer be supported. It appears they are on HRMS 8.3 and
14 FMS 8.2. They would not want to purchase extended support
15 even if available. They don't intend to update in near
16 future and starting to look at third-party vendors.
17 Submitted 90-day notification."

18 Did I read that correctly?

19 A. You read the information in that cell correctly.

20 Q. Did you consider that information in formulating
21 your opinions in this case?

22 A. This isn't the kind of information that I would
23 consider because I have no basis for understanding about
24 what this information is.

25 MR. STRAND: Thank you.

1 We'll move on, Your Honor.

2 Your Honor, I'm about to enter a new section.
3 I'm happy to go forward. I wanted to get done, but I
4 didn't. I'll go as long as you want.

5 THE COURT: Well, I assume there's going to be
6 some redirect examination. Is that correct, Mr. Isaacson?

7 MR. ISAACSON: Yes, Your Honor.

8 THE COURT: Given that, I think we should take
9 our break for the evening.

10 Ladies and gentlemen, we will break for the
11 evening at this time.

12 And I remind you of the same admonitions. I'm
13 not going to go through them again. You've certainly heard
14 that more than anything else.

15 With regard to tomorrow's schedule, we'll start
16 promptly at 8:00 in the morning, and we will break I
17 believe right around 11:45. There's some still issues
18 concerning travel connections for any number of people, and
19 we'll break at 11:45.

20 And we'll be going into next week. Essentially,
21 ladies and gentlemen, I see that we're pretty much on the
22 schedule that we talked about on this case. I think we're
23 looking at next week and potentially into the week
24 following that.

25 I think it's very unlikely that we would go

1 beyond that. But because of this case being so complex,
2 it's difficult for me to really pin it down. I also don't
3 know exactly, obviously, what counsel have planned, and I'm
4 sure their plans change from time to time as well, but I
5 think we're moving fairly well.

6 And I want to compliment you again. You have
7 been here ready to go every time we've asked you to do it,
8 and I think that's outstanding.

9 Remember, this is a form of community and public
10 service, and you people have already earned my respect just
11 with the way I've seen you be here and be so attentive.

12 So with all that, I will excuse you for the
13 evening. Please keep the admonitions in mind, and we will
14 start promptly in the morning at 8:00 a.m.

15 You may go ahead and step down.

16 COURTROOM ADMINISTRATOR: Please rise.

17 (The proceedings adjourned at 2:04 p.m.)

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I certify that the foregoing is a correct
transcript from the record of proceedings
in the above-entitled matter.

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Donna Davidson, RDR, CRR, CCR #318 Official Reporter	9/25/15 Date

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